

ultimately sold for a sum under £400, and I was about to make arrangements for the payment of the balance when, on submitting a full statement of the case to the Government of the day, I was directed to place the deficiency on the estimates for the year, and allow Parliament to decide whether the colony should pay the deficiency or I should. Parliament voted the money, and hence the Public Trustee was relieved from this personal liability. I would suggest that, in fairness to the Public Trustee, unless it can be shown that he has wilfully or negligently wasted the estate, that personal liability should cease.

92. What did the office lose on that estate?—The office lost £120, or thereabouts.

FRIDAY, 10TH APRIL, 1891.

Mr. R. C. HAMERTON, Public Trustee.—Examination continued.

*Witness:* There is one matter I want to interpolate. It is a matter relating to the Audit Department; and I should like it to appear on record. It is in connection also with the law practitioners' bills of costs, which have been a fruitful source of conflict between the two departments. The case was a Napier case. The solicitor's bill of costs came in—a very small matter, of six guineas—and I referred it to the office Solicitor: "Do you consider these charges reasonable?" The office Solicitor, in effect, said that he thought the charges might be reduced by £1 4s. I then referred it to the solicitor concerned: "Will you agree to a reduction of £1 4s.?" The solicitor explained that his charges were reasonable, and suggested that "the account be taxed by the Registrar, as we understand that is the usual practice." I then referred the bill of costs to the Registrar of the Supreme Court, as was the usual course. The solicitor says, "The reference to the Registrar has been made without notice to us, and he cannot be aware of the facts of the case, and we therefore cannot accept the taxation." I should like to explain to the Commissioners the great difference there is between the Registrar's certificate and an ordinary taxation. The ordinary taxation is the usual course adopted in dealing with solicitors' bills of costs of any magnitude. There the solicitor on either side appears before the taxing-master and argues his case, and the Registrar comes to a conclusion. But the Registrar's certificate is merely a Governmental method to satisfy the department that the charges in that bill are reasonable. If the Registrar marks the bill as being reduced by a guinea or two guineas it is not binding upon the solicitor at all, because he has no method of putting his side of the case. That has been the occasion of much correspondence between the Audit and the Public Trust Office. Now, when the Napier solicitor had said this, I referred the matter to the office Solicitor: "Do you see any way out of this difficulty except by taxation, which involves comparatively great expense?" Now, I should like to read the memorandum which the office Solicitor made on that; it is as follows:—

*Re* JAMES McNAMARA, Deceased. (Reply to Reference on 88/102.)

If a custom is to commence of referring every bill of costs with a disputed item to taxation, then the expense to this office will in the aggregate be very serious, and form a continual sore with the legal profession. I can conceive of nothing more detrimental to the continued progress of this office than to have the legal profession as a whole embittered against it, which these continual carpings will have the effect of doing. The Audit Office should know that in every provincial district legal charges vary—Otago, for instance, being higher than Christchurch.

I have said before, and I now repeat it, there is no statute or regulation justifying these references, nor could a Registrar be blamed for declining to tax; and sooner or later the Audit must recede from the false position they take up. Another powerful consideration is that, unless the Public Trustee goes to an expense of £3 or £4 to obtain taxation and be represented by a solicitor (which gentleman will know very little of the actual facts), taxation cannot be had; and when from any cause taxation is *ex parte* it is little more than a form. I mean no reflection upon the Registrar thereby—it is common experience. Again, there is no common basis on which to assess what is a proper fee for this or that attendance at a Court or for an opinion. If a lawyer knows his bill is likely to be taxed he will frame it accordingly—and to tax is to ask the legal profession to increase their bills sent in. It only needs alterations in the language; a costs clerk understands it. The way out of this difficulty is to pay the bill, as it is plain less than a sixth will be taxed off, and taxation means paying £8 or £9 instead of £5.

F. J. WILSON.

12th March, 1888.

For the consideration of the Hon. the Premier.

THE Audit has hitherto treated the accounts of the Trust Office as all other claims on public moneys. The rule has always been that all lawyers' bills shall be taxed by a Registrar. If the Government considers that the regulation should be altered I have nothing to say against it. Mr. Hamerton and Mr. Wilson both are entirely wrong as to expense. Taxing does not cost a penny when done for the Government. It is *ex parte*, and a part of the Registrar's duty. My experience is, however, that it is not of very great practical use. We rarely find that the Registrars make any important deductions.

J. E. F.

Hon. the Premier.

MR. FITZGERALD does not apparently discriminate between "taxation" which entails argument of solicitors before the taxing-master—i.e., the Registrar—and which is a comparatively costly process, and the certificate of the Registrar, which costs nothing. The difficulty is that solicitors, as a rule, will not submit to a reduction of their charges—the present case is in point—simply at the will of the Registrar, but are inclined to insist on the more expensive method of taxation. The fact is that the requirement of the Audit is unnecessary, entails an immensity of useless labour, is extremely obnoxious to the profession, and entails loss upon the estates in respect of which the bills of costs are incurred.

21st March, 1888.

R. C. HAMERTON.

That has been my argument all through. If the Auditor permitted me to arrange with solicitors, their bills of costs would have been lower than they have been, simply because they had the knowledge that the bill was to go before the taxing-master.

93. *The Chairman.*] Then, do I understand you to blame the Audit Department for any excess of legal costs you have had to pay?—I would not go so far as that. In many cases it has been so, no doubt, because the solicitors, in my experience, have been willing to meet me where there was a poor estate. I have brought with me this morning a recapitulation of the suggestions which I have made, and I should like to conclude my statement by placing that recapitulation before the Commission. The most important and desirable change is that relating to the payment of claims