

7th August, 1897.

DEAR SIR,—

*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 plaintiff 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 that 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 considered 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 arms' 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. These are the minutes:—

1. The name of the original co-plaintiff, Wirihana Hunia, having been struck out by order of His Honour the Chief Justice on the day of August, 1897, on the application of the said original co-plaintiff, amend the statement of claim by substituting the word "plaintiff" for "plaintiffs" wherever the latter word occurs, and make all consequential grammatical amendments.

2. The plaintiff withdrawing all charges against the defendant, Sir Walter Buller, and submitting to a finding in favour of the said defendant upon (all) the matters of fact and law alleged in paragraphs 27 to 34, inclusive, of the original statement of claim, and upon all the matters of fact and law alleged in the additions made to the original statement of claim by amendment, decree that the said defendant is entitled to the final judgment of this Court upon the several issues of fact and law raised by such allegations.

3. Decree that the validity of each and every of the 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.

4. Decree that each and every of the said dealings is entitled to be re-registered, pursuant to section 10 of "The Horowhenua Block Act, 1896."

5. Adjudge that the plaintiff do pay to the said defendant his costs of the action, computed, &c.

*Sir R. Stout*: On behalf of Major Kemp I have to state that, unfortunately for him, Parliament did not yield to his suggestion that any charges made against him should be investigated by the Supreme Court, and, therefore, in this action he has only been brought into it almost like what is called a third party—viz., to be bound by any decision that might be made against Sir Walter Buller; and as this action is, under section 10 of the Act, to deal with the validity of the dealings on the certificate of title of Division 14, of course he can ask nothing further than that the action may be dismissed against him. As to costs, I suggested that there should be added to the decree words to this effect: "This Court doth further order that the action be dismissed so far as the defendant Keepa te Rangihwinui is concerned, and that the plaintiff do pay to the said defendant the full costs of suit, on the same being taxed by the Registrar of this honourable Court." Considering the litigation that has taken place in this matter, I suggest that we should have full costs of the suit, and not merely costs in accordance with the scale of which your Honour is aware. Major Kemp has really been brought into this matter because he had the temerity to say that he was trustee for part of Block 11. Otherwise there would have been no trouble. There would have been no Horowhenua Block case proposed. He was punished because he was honest, and because he dared to say he was a trustee for Block 11. Of course, I do not wish to make any comments upon that matter. It would be improper for me to say anything further about it. As far as Major Kemp was concerned, he was always willing, and in fact he begged the Legislative Council to be allowed to have his case tried by the Supreme Court; but that justice was denied him. I simply ask now that the action against him should be dismissed, and that we should have full costs,