

SESS. II.—1897.
NEW ZEALAND.

THE HOROWHENUA BLOCK.

MEMORANDUM *RE* PROCEEDINGS IN THE SUPREME COURT UNDER THE PROVISIONS OF SECTION 10 OF "THE HOROWHENUA BLOCK ACT, 1896."

Laid upon the Table by the Hon. John McKenzie, with the Leave of the House.

THE following notes are intended to supply an obvious hiatus between papers G.-2 and G.-2A heretofore published :—

1. The taking of the evidence and the addresses of agents in the Native Appellate Court, under "The Horowhenua Block Act, 1896," in respect of Division No. 14, were not completed until the 8th April, 1897, and the proceedings in that Court are still incomplete, inasmuch as it has reserved its decision.

2. The Public Trustee was directed by section 10 of that Act to institute proceedings in the Supreme Court within six months from the passing of the same—that is, on or before the 17th April, 1897.

3. He therefore, in order to technically comply with that section, issued his writ on the 14th April, 1897, intending to delay service of the same until the judgment of the Native Appellate Court as to whether Kemp held the land in trust or as sole beneficial owner had been delivered.

4. On the 3rd day of May, 1897, Sir Walter Buller, one of the defendants, took out a summons calling on the plaintiffs to show cause, *inter alia*, why the defendants should not have leave to severally file their statement of defence forthwith. On the hearing of this summons, it was urged that the proceedings in the Supreme Court were premature until the judgment of the Native Appellate Court had been given; and, further, that if the latter Court decided that Major Kemp was beneficially entitled to the land, then such proceedings would thereby be entirely obviated.

His Honour the Chief Justice disallowed these objections, and directed that the defendants should be served with the writ and statement of claim within fourteen days, or should be entitled to file their statements of defence as if they had been so served. Service was accordingly made on the 20th May, 1897.

Every effort to have the proceedings in the Supreme Court postponed until after the judgment of the Native Appellate Court, which would decide Kemp's position in the matter, having failed, and a subsequent notice of discontinuance of action under the circumstances having been disallowed, the hearing by the Supreme Court took place on the 11th August, 1897.

Copies of the statement of claim, and amended statement of claim and of the defences, and a shorthand writer's report of the proceedings in the Supreme Court, are appended hereto.

A.

In the Supreme Court of New Zealand, Wellington District.

No. 6147.

Between the PUBLIC TRUSTEE incorporated by "The Public Trust Office Consolidation Act, 1894," and WIRIHANA PAEROA, otherwise called WIRIHANA HUNIA, of Parawanui, in Rangitikei, an aboriginal native of the Colony of New Zealand, Plaintiffs, and Sir WALTER LAWRY BULLER, K.C.M.G., of the City of Wellington, gentleman, and MEIHA KEEPA TE RANGIHIWINUI, of Putiki, near Wanganui, an aboriginal native of the Colony of New Zealand, Defendants.

STATEMENT OF CLAIM.

THE plaintiffs, by their solicitor, Edward Stafford, say :—

1. The plaintiff the Public Trustee institutes this action in compliance with the direction of "The Horowhenua Block Act, 1896," and with the concurrence of the plaintiff Wirihana Hunia, one of the registered owners named in the Sixth Schedule to the said Act, and the plaintiff Wirihana Hunia institutes this action in his own right as one of such registered owners.

2. On the 10th day of April, 1873, an order was duly made by the Native Land Court, under "The Native Land Act, 1865," and "The Native Land Act, 1867," for the issue in favour of the defendant Meiha Keepa te Rangihwinui of a certificate of title under the seventeenth section of "The Native Land Act, 1867," for a parcel of land at Horowhenua, in the Provincial District of Wellington, containing 52,000 acres or thereabouts.

3. On the same day an order was duly made by the Native Land Court, pursuant to the provisions of the said seventeenth section of "The Native Land Act, 1867," for the registration in the said Court of a list containing the names of 143 aboriginal natives of New Zealand, including the plaintiff Wirihana Paeroa or Hunia, as the owners of the said land, and the said names were registered accordingly. The finding of the said Native Land Court upon which the order mentioned in this and the last paragraph hereof was based was that the said 143 persons, being members of the "Muaupoko," the "Rangitane," the "Ngatiapa," and the "Ngatikahungunu" Tribes, were entitled to the said land, and the said list included members of those tribes.

4. On the 27th day of June, 1881, a certificate of title under the provisions of section 17 of "The Native Land Act, 1867," was, pursuant to the said orders, duly issued by the Native Land Court, under the seal of the said Court and under the hand of the Chief Judge thereof, in favour of the defendant Meiha Keepa te Rangihwinui for the said Horowhenua Block, and he thereby became a trustee thereof for the 143 persons mentioned in the said registered list.

5. On the 25th day of November, 1886, the Native Land Court sat at Palmerston North for the purpose of partitioning the said Horowhenua Block upon the application of the defendant Meiha Keepa te Rangihwinui under section 10 of "The Native Land Division Act, 1882," he being the sole certificated owner under the aforesaid certificate of the 27th day of June, 1881. The said Native Land Court in the said proceedings acted under "The Native Land Court Act, 1880," and "The Native Land Division Act, 1882."

6. On the 25th day of November, 1886, the said Native Land Court made an order for the issue to the defendant Meiha Keepa te Rangihwinui of a certificate of title under the provisions of "The Land Transfer Act, 1885," and its amendments for a part of the said block, and in the said order called "Horowhenua No. 1," containing 76 acres 2 roods 26 perches; and an order for the issue to the said defendant of a certificate of title for a parcel of land part of the said block, and in the said order called "Horowhenua No. 2," containing 3,988 acres 2 roods 32 perches; and an order for the issue of a certificate of title to the said defendant for another portion of the said block, containing 1,200 acres, and called "Horowhenua No. 3," contiguous to the southern boundary of the said Horowhenua Block, but lying entirely to the eastward of the railway-line hereinafter mentioned (being Subdivision No. 1).

7. The first of the orders mentioned in the last paragraph was made so that an agreement for sale of the said parcel of land called "Horowhenua No. 1" made by the defendant Meiha Keepa te Rangihwinui to the Wellington and Manawatu Railway Company (Limited), whose railway is in part built upon that parcel of land, might be carried into effect. The second of the said orders mentioned in the last paragraph was made so that an agreement for sale of the said parcel of land called "Horowhenua No. 2" made by the said defendant Meiha Keepa te Rangihwinui to Her Majesty the Queen for the purpose of a township now called "Levin" might be carried into effect. The third of the said orders was made so that the said defendant Meiha Keepa te Rangihwinui might carry into effect an agreement made between himself and the late Sir Donald McLean in 1874 to give to certain descendants of Te Whatanui (a Ngatiraukawa chief) who were not then ascertained 1,200 acres of the said Horowhenua Block in settlement of a long-standing dispute between the Muaupoko and Ngatiraukawa Tribes.

8. After making the orders mentioned in paragraphs 6 and 7, the said Native Land Court adjourned until the following Saturday, the 27th day of November, 1886, at 10 a.m.

9. On the said 27th day of November, 1886, the Judge of the said Native Land Court who presided at the sitting of the Native Land Court on the 25th day of November, 1886, attended for the purpose of continuing the said proceedings; but no Assessor of the said Court attended, and in consequence thereof the said Judge purported to adjourn the further hearing of the said proceedings until the following Wednesday, being the 1st day of December, 1886.

10. The plaintiffs allege that all orders purporting to be made by the said Native Land Court after the said adjournment of the 27th day of November, 1886, were invalid, because the said proceedings lapsed on that day, and the said Judge had no jurisdiction to adjourn the said proceedings as he purported to do.

11. On the 1st day of December, 1886, the said Native Land Court, without proper notice to the persons interested in the said Horowhenua Block, purported to continue the partition thereof pursuant to the said alleged adjournment, and confirmed the orders for the railway-line and for the township made on the 25th day of November, 1886, but did not then confirm the order made on the said 25th day of November, 1886, for the 1,200 acres intended to be given to the descendants of Te Whatanui as aforesaid; and made an order for the issue to the defendant Meiha Keepa te Rangihwinui of a certificate of title under the provisions of the Land Transfer Acts for a parcel of land part of the said Horowhenua Block, and in the said order called "Horowhenua No. 9," containing 1,200 acres, so that the defendant Meiha Keepa te Rangihwinui might carry into effect the said agreement made between himself and Sir Donald McLean hereinbefore referred to.

12. The plaintiffs allege that the reason why the Native Land Court on the 1st day of December, 1886, made the order referred to in the last paragraph for "Horowhenua No. 9" was that, subsequently to the making of the order as to "Horowhenua No. 3" on the 25th day of November, 1886, it was uncertain whether or not the descendants of Te Whatanui would accept that subdivision in performance of the agreement entered into between the defendant Meiha Keepa te Rangihwinui and Sir Donald McLean; and, in order to afford a choice to such descendants, the said order of the 1st day of December, 1886, was made so that they might accept either the 1,200 acres which had been ordered on the 25th day of November, 1886, or the 1,200 acres which had been ordered on the 1st day of December, 1886.

13. On the 3rd day of December, 1886, the said Native Land Court, purporting to sit as aforesaid, made an order confirming the order made on the 25th day of November, 1886, for the 1,200 acres to be given to the descendants of Te Whatanui, which was left unconfirmed on the 1st

day of December, 1886, which 1,200 acres was in the said order of the 3rd day of December, 1886, called "Horowhenua No. 14," but which by the order made on the 25th day of November, 1886, was then called "Horowhenua No. 3."

14. The plaintiffs allege that the orders made on the 25th day of November, 1886, hereinbefore referred to, were valid as to the railway-line, the township, and the 1,200 acres (then called "Horowhenua No. 3") for the descendants of Te Whatanui, and did not require to be confirmed; and, further, that the orders so made could not thereafter be cancelled or varied by the said Native Land Court.

15. On the 1st day of December, 1886, the said Native Land Court, purporting to sit pursuant to the said adjournment, proceeded to subdivide the residue of the Horowhenua Block, and made orders as follows:—

- (a.) For a subdivision, now "Horowhenua No. 3," containing 11,130 acres, in favour of Ihaia Taueki and 105 other Natives (not including the defendant Meiha Keepa te Rangihwinui) beneficially.
- (b.) For a subdivision, now "Horowhenua No. 4," containing 512 acres 1 rood 20 perches, in favour of Hiroti Teihu and twenty-nine other Natives (not including the defendant Meiha Keepa te Rangihwinui) beneficially.
- (c.) For a subdivision, now "Horowhenua No. 5," containing 4 acres, in favour of Tamati Taopuku and Topii Kotuku beneficially.
- (d.) For a subdivision, now "Horowhenua No. 6," containing 4,620 acres, in favour of the defendant Meiha Keepa te Rangihwinui in trust to be given by him to certain Natives (being forty-four in number) not in the registered list of owners hereinbefore referred to, but whose names had been accidentally omitted therefrom.
- (e.) For a subdivision, now "Horowhenua No. 7," containing 311 acres 3 roods 15 perches, in favour of Waata Tamatea, Te Peeti Te Aweawe and Hoani Meihana beneficially.
- (f.) For a subdivision, now "Horowhenua No. 8," containing 264 acres 3 roods 15 perches, in favour of Mere Karena te Manaotawhaki, Ruahoata and Karena Taiawhio beneficially.
- (g.) For a subdivision, now "Horowhenua No. 9," containing 1,200 acres, in favour of the defendant Meiha Keepa te Rangihwinui in trust as an alternative choice for the descendants of Te Whatanui in case they rejected the 1,200 acres ordered on the 25th day of November, 1886.
- (h.) For a subdivision, now "Horowhenua No. 10," containing 800 acres, to be awarded to the defendant Meiha Keepa te Rangihwinui, as agreed upon between himself and the tribe, for the purpose of discharging the law-charges of Messrs. Sievwright and Stout against him amounting to £3,000, none of which charges had been incurred on behalf of the tribe, or in respect of the said Horowhenua Block.
- (i.) For a subdivision, now "Horowhenua No. 11," containing 15,207 acres, in favour of Warena Hunia (or Hakeke) and the defendant Meiha Keepa te Rangihwinui, being the balance of the said Horowhenua Block lying between the railway-line and the sea, in trust for the 143 persons mentioned in the said registered list.

16. On the 2nd day of December, 1886, the said Native Land Court, purporting to sit in pursuance of the said adjournment, made a further order for a subdivision, now "Horowhenua No. 13," containing one square foot, in favour of Wiremu Matakara beneficially.

17. On the 3rd day of December, 1886, the said Native Land Court, purporting to sit as aforesaid, made an order for a subdivision, now "Horowhenua No. 12," containing 13,137 acres, in favour of Ihaia Taueki in trust for himself and others of the registered owners of the said Horowhenua Block whose names the plaintiffs are unable to specify.

18. On the said 3rd day of December, 1886, the said Native Land Court, purporting to sit as aforesaid, made an order confirming the said order of the 25th day of November, 1886, for the 1,200 acres (being then the Subdivision No. 3), but which by the said confirming order was called "Horowhenua No. 14."

19. The plaintiffs believe that the defendants allege that the last-mentioned order was made in favour of the defendant Meiha Keepa te Rangihwinui beneficially and not in trust; while the plaintiffs allege that such order was made for the purpose of confirming the order of the 25th day of November, 1886, in favour of the defendant Meiha Keepa te Rangihwinui in trust in order to leave to the descendants of Te Whatanui a choice between the land included therein—namely, Subdivision No. 14—and the land included in the order made on the 1st day of December, 1886, namely, Subdivision No. 9; and they further allege that it was not until after the 3rd day of December, 1886, and when the said Native Land Court had become *functus officio*, that the said descendants of Te Whatanui elected to accept the said Subdivision No. 9; and they further allege that when the said descendants of Te Whatanui did elect to accept Subdivision No. 9 the said defendant Meiha Keepa te Rangihwinui became a trustee of Subdivision No. 14 for the 143 registered owners hereinbefore referred to.

20. The plaintiffs allege that the order as to Subdivision No. 14 made by the said Native Land Court on the 3rd day of December, 1886, if intended to be made in favour of the defendant Meiha Keepa te Rangihwinui beneficially (which they deny), was made without the Court having jurisdiction to make it, because the said Native Land Court, having already made an order on the 25th day of November, 1886, awarding the land comprised in that subdivision, thereby became *functus officio* so far as regards the awarding of that subdivision.

21. The plaintiffs believe that the defendants claim that all the said subdivisions aforesaid were made in pursuance of a voluntary arrangement under section 56 of "The Native Land Court Act, 1880," but the plaintiffs say that even if there were any such voluntary arrangement (which they deny), then that the said voluntary arrangement was bad, because the assent of the whole 143

registered owners was not given to such voluntary arrangement. They say that orders of the Native Land Court made in pursuance of a voluntary arrangement under the said section are in the nature of conveyances by the registered owners, and the assent of every one of the registered owners was necessary to the validity of every such order, and such assent was not given.

22. The plaintiffs say that even if there were any voluntary arrangement within section 56 aforesaid (which they deny), then that the orders purporting to have been made by the said Native Land Court pursuant to such voluntary arrangement are void, because the Native Land Court, in purporting to give effect to such voluntary arrangement, did not exercise any judicial discretion as by law required, but, on the contrary, declared that it had no power to exercise and did not exercise such judicial discretion.

23. The plaintiffs allege that the order as to Subdivision No. 14 made by the said Native Land Court on the 3rd day of December, 1886, if intended to be made in favour of the defendant Meiha Keepa te Rangihiwini beneficially (which they deny), was made without that Court having jurisdiction to make it, because it was a condition precedent to the exercise of jurisdiction by the Native Land Court that before division of lands owned by Natives could be made under "The Land Division Act, 1882" (under which Act the Native Land Court was then acting), all instruments of title should be surrendered on an order made for their cancellation, and the certificate of title to the defendant Meiha Keepa te Rangihiwini of the 27th day of June, 1881, was neither surrendered nor was an order for its cancellation made before the said Native Land Court proceeded to exercise jurisdiction.

24. The plaintiffs allege that if the Native Land Court on the said 3rd day of December, 1886, made an order for Subdivision No. 14 in favour of the defendant Meiha Keepa te Rangihiwini beneficially (which they deny) the land effected thereby lay entirely to the eastward of the railway-line, and that subsequently to the making of that order, and after the said Native Land Court had become *functus officio*, the Judge who sat at the time of the making of such order signed and sealed an order in favour of the defendant Meiha Keepa te Rangihiwini for Subdivision No. 14, which order included about 589 acres lying to the westward of the railway-line, and being portion of Subdivision No. 11, thereby decreasing the area of the land to which the persons in whose favour Subdivision No. 11 was awarded were entitled. Such alteration was made without the consent of the beneficial owners of Subdivision No. 11, and the provisions of "The Native Land Court Act, 1880," sections 28 to 31, were not complied with before the said order was signed and sealed, and the plaintiffs say that the said order so signed and sealed was in excess of jurisdiction, and therefore void.

25. The plaintiffs allege that if the defendant Meiha Keepa te Rangihiwini did obtain the assent of the 143 registered owners of the said Horowhenua Block to the giving to him of the said Subdivision No. 14 (which they deny) he did so by pressure and fraud upon the *cestui que trustent*, and therefore such assent was invalid.

26. The plaintiffs say that neither at the said subdivisional Court of 1886 nor at any time was an order made in favour of the defendant Meiha Keepa te Rangihiwini beneficially for the said Subdivision No. 14.

27. On the 19th day of July, 1888, a certificate of title under "The Land Transfer Act, 1885," was issued to the defendant Meiha Keepa te Rangihiwini, and registered in the office of the District Land Registrar at Wellington as Vol. xlviii., folio 148, for the said Subdivision No. 14, for an estate in fee-simple. The plaintiffs allege that such certificate of title was wrongfully issued, because the land comprised in such certificate was not then subject to the provisions of "The Land Transfer Act, 1885," and the defendants cannot claim any protection under the provisions of "The Land Transfer Act, 1885"; and the plaintiffs further allege that the defendant Meiha Keepa te Rangihiwini was then and now is a trustee of the said Subdivision No. 14 for the persons named in the registered list under section 17 of "The Native Land Act, 1867."

28. The plaintiffs allege that, notwithstanding that the defendant Meiha Keepa te Rangihiwini, under the said certificate of title of the 19th day of July, 1888, Vol. xlviii., folio 148, was a trustee of the said Subdivision No. 14, he, in fraud of that trust, dealt with the said Subdivision No. 14 as if he were the beneficial owner thereof by making the following dealings, which were registered under "The Land Transfer Act, 1885":—

- (a.) A lease, dated the 5th September, 1892, to the defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1885," as No. 1967.
- (b.) A lease, dated the 20th day of May, 1892, to the said defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1885," as No. 1968.
- (c.) A lease, dated the 31st day of October, 1892, to the said defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1885," as No. 2003.
- (d.) A transfer, dated the 20th day of May, 1892, to the said defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1885," as No. 20454, and under which a certificate of title, registered in Vol. lxvi., folio 152, was issued.
- (e.) A transfer, dated the 31st day of October, 1892, to the said defendant Sir Walter Lawry Buller, of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington as No. 20743, and under which a certificate of title, registered in Vol. lxvi., folio 152, was issued.

(f.) A mortgage, dated the 9th day of October, 1894, to the said defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1885," as No. 17927.

(g.) Other dealings with the said Subdivision No. 14 which the plaintiffs are unable to specify, and which they seek discovery of in this action.

The said leases, transfers, mortgage, and dealings were made by the defendant Meiha Keepa te Rangihiwini in breach of the trust under which he held the said Subdivision No. 14.

29. From the year 1874, and continuously therefrom, and when those transfers, leases, mortgage, and other dealings were made, the defendant Sir Walter Lawry Buller was the solicitor and confidential adviser of the defendant Meiha Keepa te Rangihiwini, and had an actual knowledge of the matters and things hereinbefore alleged, and that the defendant Meiha Keepa te Rangihiwini was a trustee of the said Subdivision No. 14 without power to make the transfers, leases, mortgage, and other dealings aforesaid.

30. The transfers, leases, mortgage, and other dealings aforesaid when made were known by the defendants to be in actual fraud of the trust under which the said Subdivision No. 14 was held by the defendant Meiha Keepa te Rangihiwini.

31. The plaintiffs say that when the defendant Sir Walter Lawry Buller obtained from the defendant Meiha Keepa te Rangihiwini the transfers and leases referred to in paragraph 28 hereof he has the solicitor and confidential adviser of the defendant Meiha Keepa te Rangihiwini, and that he obtained the said transfers and leases at grossly inadequate values and rentals.

32. The plaintiffs further say that when the defendant Sir Walter Lawry Buller obtained from the defendant Meiha Keepa te Rangihiwini the mortgage referred to in the said paragraph 28 hereof he was the solicitor and confidential adviser of the defendant Meiha Keepa te Rangihiwini, and he then represented to the defendant Meiha Keepa te Rangihiwini 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 Rangihiwini, and also further moneys to be thereafter advanced to and owing by the defendant Meiha Keepa te Rangihiwini to the defendant Sir Walter Lawry Buller; but he concealed from the said defendant Meiha Keepa te Rangihiwini 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 Rangihiwini 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.

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 Rangihiwini 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 a sum of £500 then advanced to the defendant Meiha Keepa te Rangihiwini 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 Rangihiwini in trust or beneficially.

34. The defendant Sir Walter Lawry Buller is now, and has been from the dates of the respective transfers and leases aforesaid, in possession of the land comprised in the said transfers and leases.

The plaintiffs claim:—

1. That it should be declared that the defendant Meiha Keepa te Rangihiwini was at the time of the issue of the certificate of title under section 17 of "The Native Land Act, 1867," a trustee of the land therein comprised for the owners whose names are registered under that section.

2. That it should be declared that the defendant Meiha Keepa te Rangihiwini was at the time of the making of the order for the issue to him of the certificate of title under "The Land Transfer Act, 1885," on the 19th day of July, 1888, registered Vol. xlviii., folio 148, and still is a trustee of the Subdivision No. 14 for the persons whose names were registered under section 17 of "The Native Land Act, 1867."

3. That an inquiry should be made as to who such persons are, and for that purpose (if necessary) a reference be made to the Native Land Court.

4. That it should be declared that the said Subdivision No. 14 never became subject to the provisions of "The Land Transfer Act, 1885," and that the said certificate of title, Vol. xlviii., folio 148, for the said Subdivision No. 14 was wrongfully issued, and the same should be cancelled.

5. That the aforesaid transfers 20454 and 20743, and the certificate of title under the Land Transfer Act issued thereon, and the several leases and mortgage aforesaid, and all other dealings made by the defendant Meiha Keepa te Rangihiwini with the said Subdivision No. 14, are invalid and should be declared void, and the registration thereof cancelled.

6. That the defendant Meiha Keepa te Rangihiwini should transfer the said Subdivision No. 14 to such persons as the Court finds to be the beneficial owners thereof, and the defendant Sir Walter Lawry Buller should execute transfers to such persons of the land comprised in the said transfers Nos. 20454 and 20743, and should surrender the several leases aforesaid, and execute a discharge of the said mortgage.

7. That the defendant Meiha Keepa te Rangihiwini should disclose what dealings with the said Subdivision No. 14 took place between him and the defendant Sir Walter Lawry Buller,

and the circumstances under which those dealings took place; and that the defendant Sir Walter Lawry Buller should disclose what dealings with the said Subdivision No. 14 took place between himself and the defendant Meiha Keepa te Rangihwinui, and what were the circumstances under which those dealings took place.

8. That the defendants should be restrained from dealing with the said Subdivision No. 14, and with the leases, mortgage, and other dealings hereinbefore referred to, without the order of this honourable Court.

9. That the defendants should lodge in this honourable Court all instruments of title in or under their possession or control relating to their title to or interest in the said Subdivision No. 14.

10. That the defendants deliver to the plaintiffs possession of the said Subdivision No. 14, and pay to the plaintiffs such damages for the use and occupation thereof as the Court or a jury may award.

11. That the defendant Meiha Keepa te Rangihwinui should be decreed to account for all moneys received in respect of the said Subdivision No. 14.

12. That the defendant Meiha Keepa te Rangihwinui should be decreed to obtain a transfer to the persons beneficially entitled thereto of the land comprised in the said Land Transfer certificate, Vol. xlviii., folio 148, of the 19th day of July, 1888, and in the said transfers Nos. 20454 and 20743, and surrenders of the aforesaid leases and discharge of the aforesaid mortgage; or, in the alternative, that he should pay to the plaintiffs such sum of money as may compensate for the damage occasioned by such breach of trust committed by the said defendant in making the same transfers, leases, and mortgage.

13. That such other relief, both generally and specially, should be given as the circumstances of the case require.

14. That such other orders will be made as will give effect to this claim.

15. That the defendants pay the costs of these proceedings.

B.

In the Supreme Court of New Zealand, Wellington District.

No. 6147.

Between the PUBLIC TRUSTEE, incorporated by "The Public Trust Office Consolidation Act, 1894," Plaintiff, and Sir WALTER LAWRY BULLER, K.C.M.G., and MEIHA KEEPA TE RANGIHWINU, Defendants.

AMENDED STATEMENT OF CLAIM FILED IN SUBSTITUTION OF THE ORIGINAL STATEMENT OF CLAIM.

THE plaintiff, by his solicitor, Edward Stafford, says:—

1. The plaintiff institutes this action in compliance with the direction of "The Horowhenua Block Act, 1896."

2. The said Act recites that by "The Horowhenua Block Act, 1896," it is, *inter alia*, enacted that the Governor in Council shall appoint a Royal Commission to inquire into the circumstances connected with the sales or dispositions by the Natives of any or the whole of the blocks contained in the Horowhenua Block (hereinafter called "the said block") comprising originally about 50,000 acres, and as to the purchase-money paid for the same, and as to what trusts (if any) the same were respectively subject to; and also that the costs and expenses of such Commission shall be charged upon such of the lands as the Commission shall determine; and that, in pursuance of the enactment aforesaid, a Royal Commission, as published in the *New Zealand Gazette* of the 13th day of February, 1896, consisting of James Crosby Martin, of Wellington, Esq., Robert Smelt Bush, of Auckland, Esq., and James Craig McKerrow, of Morrison's Run, Greytown, Esq., was appointed to make the inquiry aforesaid; and that the report of the Royal Commission and the minutes of the evidence taken thereby are published in parliamentary paper G.-2, of the year 1896; and that it is expedient to, as far as practicable, give effect to the recommendations in the said report set out.

3. That, under the provisions of the said "Horowhenua Block Act, 1896," a special Court, to wit, a Court called the Native Appellate Court, was set up, and was directed to determine which of the persons named in the Second and Sixth Schedules to the said "Horowhenua Block Act, 1896," were beneficially entitled to, *inter alia*, Division Fourteen of the said Horowhenua Block, exclusive jurisdiction being given to such Court to determine such matters aforesaid, and to make such order or orders as the said Court might think fit for the purpose of vesting in such persons or any of them an estate of freehold in fee-simple as tenants in common in such relative shares or interests as should be specified in such order or orders as from the date of the making of such order or orders, anything in any Act then in force to the contrary notwithstanding; and that such persons, and the successors of such of them as might be deceased, should, on the production of such order or orders to the District Land Registrar for the Wellington Land Registration District, be entitled to be registered as proprietors, and to have issued to them a Land Transfer certificate in respect of the land comprised therein; and that any existing Land Transfer certificate, and all registrations of dealings thereon in respect of any such land, should thereupon (subject to re-registration of dealings found not to be invalid as in the said "Horowhenua Block Act, 1896," provided) be deemed to be null and void as from the date of the passing of the said "Horowhenua Block Act, 1896."

4. The said "Horowhenua Block Act, 1896," also further provides that all dealings with, *inter alia*, the said Division Fourteen, pending proceedings under the provisions of the said "Horowhenua Block Act, 1896," or "The Native Equitable Owners Act, 1886," and all amendments thereof, are thereby prohibited.

5. Application having been duly made in respect of Division No. 14 to the said Native Appellate Court by some of the persons referred to in the Sixth Schedule to the said "Horowhenua Block Act, 1896," and also by the defendant Meiha Keepa te Rangihwinui, to exercise its

jurisdiction under the fourth and fifth sections of the said "Horowhenua Block Act, 1896," the said Court has duly sat and has heard all evidence adduced by the said persons in respect of such applications, but has not yet determined the said applications, or any of them, and had reserved its decision thereon, pending the decision of the Supreme Court of New Zealand upon a case stated by the said Native Appellate Court for the opinion of the said Supreme Court.

6. Under the provisions of section 10 of the said "Horowhenua Block Act, 1896," the plaintiff is directed and empowered to institute, within a period of six months from the date of the passing of the said Act, on behalf of the original registered owners of the Horowhenua Block as set forth in the Second and Sixth Schedules to the said Act, or any of them, such proceedings in the Supreme Court at Wellington as may be necessary for the purpose of testing the validity of the alienations referred to in subsection (f) of section 8 of the said Act, and also of all dealings the registration whereof shall have been cancelled as aforesaid.

7. On the 19th day of July, 1888, a certificate under "The Land Transfer Act, 1885," was issued to the defendant Meiha Keepa te Rangihiwini, and registered in the office of the District Land Registrar at Wellington as Vol. xlviii., folio 140, for the said Subdivision No. 14 for an estate in fee-simple.

8. The dealings appearing upon the said certificate of title are as follows :—

- (a.) A lease, dated the 5th September, 1892, to the defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1885," as No. 1967.
- (b.) A lease, dated the 20th May, 1892, to the said defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1885," as No. 1968.
- (c.) A lease, dated the 31st October, 1892, to the said defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1885," as No. 2005.
- (d.) A transfer, dated the 20th May, 1892, to the said defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1885," as No. 20454, under which a certificate of title registered in Vol. lxvi., folio 152, was issued.
- (e.) A transfer, dated the 31st day of October, 1892, to the said defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington as No. 20643, and under which a certificate of title registered in Vol. lxvi., folio 152, was issued.
- (f.) A mortgage, dated the 9th day of October, 1894, to the said defendant Sir Walter Lawry Buller of part of the said land, which was registered in the books of the District Land Registrar for the District of Wellington, under "The Land Transfer Act, 1886," as No. 17927.

9. The cancellation of the registration upon the said certificate of title, Vol. xlviii., folio 148, of the said dealings depends upon the determination of the Native Appellate Court of the matters referred to in paragraph 3 of the statement of claim, and the making and the issue by the said Native Appellate Court of the order or orders therein referred to.

10. Until the said Native Appellate Court shall have determined such matters as aforesaid, and made such order or orders as aforesaid, this honourable Court cannot test the validity of the said dealings nor make or pronounce final judgment in this action.

The plaintiff further says, without prejudice to and expressly subject to the question of law arising upon the construction of "The Horowhenua Block Act, 1896," and hereinbefore set forth :—

11. He repeats paragraph 2 of this amended statement of claim, and craves leave to refer to the Royal Commission therein referred to.

12. That the true meaning and effect of the said "Horowhenua Block Act, 1896," is that the said Meiha Keepa te Rangihiwini is thereby declared trustee for the persons mentioned in the Second and Sixth Schedules to the said Act of, *inter alia*, Division No. 14 of the said Horowhenua Block, and holds the said land in trust for them until the Native Appellate Court hereinbefore referred to shall have made the order or orders referred to in sections 4 and 5 of the said Act.

13. The plaintiff further says, without prejudice as aforesaid, certain of the persons named in the Second and Sixth Schedules to the said Act (contend that they) are the beneficial owners of the said Division No. 14, and that the defendant Meiha Keepa te Rangihiwini holds the said land in trust for the persons named in the Second and Sixth Schedules to the said Act, or certain of them.

14. They also contend that the defendant Sir Walter Lawry Buller had, prior to and at the time he entered into the dealings with the defendant Meiha Keepa te Rangihiwini, set forth in paragraph 8 of this amended statement of claim notice that the said land was, though vested in the defendant Meiha Keepa te Rangihiwini, held by him as trustee for the said persons, and that the said persons were the beneficial owners thereof.

15. The plaintiff repeats the matters set forth in paragraph 5 of this amended statement of claim.

The plaintiff prays :—

- (1.) That it may be ordered and declared by this honourable Court that the determination by the said Native Appellate Court of the matters referred to in paragraph 3 of this statement of claim is a condition precedent to an inquiry into the validity of the said dealings.

- (2.) That in the meantime, and until such determination by the Native Appellate Court as aforesaid, it may be ordered and declared that the question of validity of the said dealings cannot be adjudicated upon by this honourable Court.

In the alternative, and without prejudice to and expressly subject to the questions of law arising upon the construction of "The Horowhenua Block Act, 1896," and hereinbefore set forth :—

- (3.) That the honourable Court may declare that it is the true meaning and effect of the said Act that the said Meiha Keepa te Rangihiwini is thereby declared trustee of the said Division No. 14 of the said block for the persons named in the Second and Sixth Schedules to the said Act.
- (4.) That this honourable Court may declare whether or not the alienations and dealings set forth in paragraph 8 of this amended statement of claim are valid.
- (5.) For such further or other relief in the premises as this honourable Court may think fit.

C.

Sir W. L. BULLER'S STATEMENT OF DEFENCE.

ON Thursday, the 27th day of May, 1897, the defendant Sir Walter Lawry Buller, by his solicitor, Arthur Percival Buller, saith :—

1. As to paragraph 1 of the statement of claim, he denies the right of the Public Trustee to join in this action the plaintiff Wirihana Hunia, and he files this defence pursuant to leave granted by order of this honourable Court without prejudice to his objection to such rejoinder, and he admits that this action is the statutory action directed to be brought by "The Horowhenua Block Act, 1896."

2. As to paragraph 2 of the statement of claim, he admits the same.

3. As to paragraph 3, he admits the same, but alleges that the defendant Meiha Keepa te Rangihiwini was one of the 143 owners named in the list.

4. As to paragraph 4, he admits the same, except the allegation that the said defendant Meiha Keepa te Rangihiwini became a trustee of the Horowhenua Block for the 143 persons mentioned in the registered list; and he says that the said defendant Meiha Keepa te Rangihiwini became and was the certificated owner under the 17th section of "The Native Land Act, 1867," with all such powers and duties as are by law attributable to that tenure.

5. As to paragraph 5, he admits the same.

6. As to paragraph 6, he denies the several allegations thereof, and in lieu thereof he says that on the 26th day of November, 1886, the Native Land Court made an order in freehold tenure to the defendant Meiha Keepa te Rangihiwini for a part of the said block in the said order called Horowhenua No. 1, containing 76 acres 3 roods 26 perches, and an order in freehold tenure to the said defendant Meiha Keepa te Rangihiwini for a parcel of land containing 4,000 acres in the said order called "Horowhenua No. 2," and an order in freehold tenure to the said defendant Meiha Keepa te Rangihiwini for another portion of the said block containing 1,200 acres in the said order called "Horowhenua No. 3"; and he specifically denies that the said portion containing 1,200 acres then before the Court was contiguous to the southern boundary of the said Horowhenua Block and lying to the eastward of the railway-line, and avers that it was the portion of the said block now known as "Horowhenua No. 9."

7. As to paragraph 7, he admits the same except the allegation that an agreement was made between the defendant Meiha Keepa te Rangihiwini and the late Sir Donald McLean, and avers that a promise was made by the said defendant Meiha Keepa te Rangihiwini to the late Sir Donald McLean, then Native Minister, and was a personal promise made by the said defendant Meiha Keepa te Rangihiwini as chief of the tribe on behalf of the tribe to the said Sir Donald McLean, and was not at any time binding in law upon the said defendant or the other registered owners. The said promise is in writing and is a record of the Native Office, and the defendant craves leave to refer to the express terms of the same.

8. As to paragraph 8, he admits the same.

9. As to paragraph 9, he admits the same.

10. As to paragraph 10, he denies the propositions of law therein stated.

11. As to paragraph 11, he denies the same, and in lieu thereof alleges that on the 1st day of December, 1886, the Native Land Court confirmed the order for the railway-line 76 acres 2 roods 26 perches, and for the 4,000 acres made on the 25th day of November, 1886, but did not then expressly confirm the order made on the 25th day of November, 1886, for the 1,200 acres intended to be given to the descendants of Te Whatanui, but then made an order in freehold tenure to the defendant Meiha Keepa te Rangihiwini of a parcel of land called "Horowhenua No. 9," containing 1,200 acres, so that the said defendant Meiha Keepa te Rangihiwini might carry into effect the promise made to Sir Donald McLean as hereinbefore alleged.

12. As to paragraph 12, he denies the same and every allegation thereof, and avers that on and prior to the 1st day of December, 1886, the descendants of Te Whatanui and Mr. Lewis, Under-Secretary for Native Affairs, on behalf of the Government, had notified their acceptance of the block known as "Horowhenua No. 9" as a complete fulfilment of the promise made to Sir Donald McLean as aforesaid.

13. As to paragraph 13, he denies the same and every allegation thereof, and says that on the 3rd day of December, 1886, the Native Land Court made an order in freehold tenure in favour of the said defendant Meiha Keepa te Rangihiwini as the beneficial owner thereof of 1,200 acres called "Horowhenua No. 14."

14. As to paragraph 14, he denies the proposition of law therein stated.

15. As to paragraph 15, he admits the sub-paragraphs (a), (b), (c), (d), (e), and (f), but denies sub-paragraph (g) and every allegation thereof. He admits the sub-paragraphs (h) and (i).

16. As to paragraph 16, he admits the same.

17. As to paragraph 17, he admits the same.

18. As to paragraph 18, he denies the same and every allegation thereof.

19. As to paragraph 19, he denies the same and every allegation thereof.

20. As to paragraph 20, he denies the same and every allegation thereof, and says that the Native Land Court had, on the 3rd day of December, 1886, full jurisdiction to make the order which it did make in freehold tenure to the said defendant Meiha Keepa te Rangihwinui for Subdivision No. 14.

21. As to paragraph 21, he denies that the voluntary arrangement was invalid, and denies the propositions of law stated in the said paragraph; and further avers that, with respect to the order in freehold tenure to the said defendant Meiha Keepa te Rangihwinui for Subdivision No. 14, the Court challenged objectors before making the order.

22. As to paragraph 22, he denies the facts and the propositions of law therein alleged and stated, and says that in fact an order in freehold tenure for Subdivision No. 14 was duly and legally made.

23. As to paragraph 23, he denies the facts and propositions of law therein alleged and stated, and further denies that the matters therein alleged are relevant to the issues in this action, brought pursuant to "The Horowhenua Block Act, 1896," which Act assumes the existence of Subdivision No. 14 as a subdivision duly made by a Court of competent authority.

24. As to paragraph 24, he repeats his answer to paragraph 23 and further says that upon the survey other subdivisions were altered in position and area, and that the Subdivision No. 14 referred to in "The Horowhenua Block Act, 1896," is the subdivision in respect of which the order in freehold tenure was made, and in respect of which the certificate of title issued to the said defendant Meiha Keepa te Rangihwinui; and he expressly denies that the alteration in Subdivision No. 11 was made without the consent of the owners of that subdivision.

25. As to paragraph 25, he denies that the said defendant Meiha Keepa te Rangihwinui exercised or used any pressure or fraud as therein alleged.

26. As to paragraph 26, he denies the same and every allegation thereof.

27. As to paragraph 27, he admits the issue of the certificate of title, and denies that the same was wrongfully issued, and denies that he cannot claim protection under the provisions of the Land Transfer Act, and denies that the said defendant Meiha Keepa te Rangihwinui was then or at any time a trustee for Subdivision No. 14 for the persons named in the registered list or for any other persons.

28. As to paragraph 28, he admits the dealings specified therein, but denies that the said defendant Meiha Keepa te Rangihwinui was a trustee of Subdivision No. 14, or that any such dealings were in fraud of any trust.

29. As to paragraph 29, he denies that from the year 1874 and continuously therefrom he had been the solicitor and confidential adviser of the said defendant Meiha Keepa te Rangihwinui; and he further denies that he had any knowledge whatsoever of the matters and things alleged in the first twenty-six paragraphs of the statement of claim; and he denies that he knew that the said defendant Meiha Keepa te Rangihwinui was a trustee of Subdivision No. 14 without power to make transfers, leases, or mortgages; and he avers that, in respect of the Horowhenua Block, he never acted as the solicitor or confidential adviser of the said defendant Meiha Keepa te Rangihwinui until the month of July, 1892.

30. As to paragraph 30, he denies the same and every allegation thereof.

31. As to paragraph 31, he admits that when he obtained from the said defendant Meiha Keepa te Rangihwinui the transfers and leases other than the lease of the 20th day of May, 1892, he was the solicitor and confidential adviser of the said defendant; but, as to the lease of the 20th day of May, 1892, he denies that when he obtained the same he was the solicitor or confidential adviser of the said defendant; and he denies that he obtained any such transfers and leases at inadequate values and rentals, but says that all the values and rentals were fair and just; and, further, as a matter of law, he denies the relevancy of any of the allegations of paragraph 31 to the issues in this action.

32. As to paragraph 32, he says that, in respect of the mortgage therein referred to, he was not the solicitor and confidential adviser of the said defendant Meiha Keepa te Rangihwinui, but, on the contrary, Mr. W. B. Edwards acted as the solicitor for the said defendant in that matter. He denies that he concealed any matter whatsoever from the said defendant Meiha Keepa te Rangihwinui, and he says that the document was certified as correct for the purposes of the Land Transfer Act by Mr. W. B. Edwards, as solicitor for the said defendant Meiha Keepa te Rangihwinui; and he denies that the said defendant was unaware of any matter which was provided in the said mortgage; and, further, as a matter of law, he denies the relevancy of any of the allegations of paragraph 32 to the issues in this action.

33. As to paragraph 33, he denies that he concealed any matter from the Trust Commissioner, but avers that Mr. W. B. Edwards, the solicitor for the defendant as well as for the said defendant Meiha Keepa te Rangihwinui, appeared before the Trust Commissioner. He avers that the Trust Commissioner had the deed in his possession for seven days. He denies that the Trust Commissioner abstained from making the inquiries therein referred to, and he further says that the Trust Commissioner sat as a Court of competent jurisdiction to determine the questions required by law to be determined by him prior to the granting of his certificate, and that the Trust Commissioner did grant a certificate under "The Native Lands Frauds Prevention Act 1881 Amendment Act, 1888," and that the same was final and conclusive; and he denies the right of the plaintiff to allege in this Court matters in contravention of that certificate.

34. As to paragraph 34, he admits the same, except that, as to part of the land comprised in one of the leases, he has not been in actual possession thereof, as the same has been occupied by one Peter Bartholomew.

35. He alleges that the Subdivision No. 14 referred to in "The Horowhenua Block Act, 1886," is the Subdivision No. 14 in respect of which a certificate of title under the Land Transfer Act was issued, and he denies that any allegation of invalidity or insufficiency in the proceedings of the Native Land Court, or of the location of the said subdivision upon survey, is relevant to the matters in issue in this action.

And for a further defence the said defendant repeats the allegations of his first defence, except so much of paragraphs 6 and 11 as conflict with this defence, and says:—

36. That if (as he denies) the 1,200 acres intended to be dealt with by the Court on the 25th day of November, 1886, and in respect of which a minute was made, but no location defined, and no order drawn up, was the 1,200 acres now known as Subdivision No. 14, then the Native Land Court, on the 1st day of December, 1886, after satisfying itself as to the consent of the registered owners and the approval of the descendants of Te Whatanui and of the Native Department, by order allotted to the said defendant Meiha Keepa te Rangihiwini in trust for the descendants of Te Whatanui the block now known as "Horowhenua No. 9"; and that on the 2nd day of December, 1886, the said defendant Meiha Keepa te Rangihiwini applied to the Court to allot to him personally as owner of the block known as "Horowhenua No. 14," and on the 3rd day of December, 1886, after being satisfied that all parties consented to such application, the Court duly allotted Block No. 14 to the said defendant Meiha Keepa te Rangihiwini as owner thereof, and directed the issue of an order in freehold tenure to him.

37. The defendant further avers that, if the circumstances of the allotment of Block No. 14 to the said defendant Meiha Keepa te Rangihiwini were as alternately alleged in this defence, he had no knowledge or notice whatsoever of the same at the time when he acquired the several leases and transfers referred to in the statement of claim, or when the mortgage referred to in the statement of claim was executed in his favour.

And for a further defence the said defendant repeats the allegations of his first defence and says:—

38. That the Native Land Court sat in the year 1886 for the partition of the Horowhenua Block, and an order in freehold tenure for Subdivision No. 14 was then made in favour of the said defendant Meiha Keepa te Rangihiwini, and a certificate of title under the Land Transfer Act issued to him, and since then the said Meiha Keepa te Rangihiwini has dealt with the land as his own, and has received the rents and profits thereof, and no claim by any person as *cestui que trust*, or as having any right, estate, or interest in the said Subdivision No. 14, was ever at any time made or suggested until the year 1895.

This statement of defence is filed and delivered on behalf of the defendant Sir Walter Lawry Buller by Arthur Percival Buller, his solicitor, whose address for service is at the offices of Messrs. Buller and Anderson, Featherston Street, in the City of Wellington.

D.

MEIHA KEEPA TE RANGIHIWINUI'S STATEMENT OF DEFENCE.

On Thursday the 27th day of May, 1897, the defendant Meiha Keepa te Rangihiwini, by Frank Cecil Beddard, his solicitor, saith:—

1. As to paragraph 1 of the statement of claim, he denies the right of the Public Trustee to join in this action the plaintiff Wirihana Hunia, and he files this defence pursuant to leave granted by order of this honourable Court without prejudice to his objection to such enjoinder, and he admits that this action is the statutory action directed to be brought by "The Horowhenua Block Act, 1896."

2. As to paragraph 2 of the statement of claim, he admits the same.

3. As to paragraph 3, he admits the same, but alleges that he the said defendant was one of the 143 owners named in the list.

4. As to paragraph 4, he admits the same, except the allegation that he became a trustee of the Horowhenua Block for the 143 persons mentioned in the registered list, and he says that he became and was the certificated owner under the 17th section of "The Native Land Act, 1867," with all such powers and duties as are by law attributable to that tenure.

5. As to paragraph 5, he admits the same.

6. As to paragraph 6, he denies the several allegations thereof, and in lieu thereof he says that on the 25th day of November, 1886, the Native Land Court made an order in freehold tenure to him for a part of the said block in the said order called "Horowhenua No. 1," containing 76 acres 3 roods 26 perches, and an order in freehold tenure to him for a parcel of land containing 4,000 acres in the said order called "Horowhenua No. 2," and an order in freehold tenure to him for another portion of the said block containing 1,200 acres in the said order called "Horowhenua No. 3"; and he specifically denies that the said portion containing 1,200 acres then before the Court was contiguous to the southern boundary of the said Horowhenua Block and lying to the eastward of the railway-line, and avers that it was the portion of the said block now known as "Horowhenua No. 9."

7. As to paragraph 7, he admits the same, except the allegation that an agreement was made between him and the late Sir Donald McLean, and avers that a promise was made by him the said defendant to the late Sir Donald McLean, then Native Minister, and was a personal promise made by him the said defendant as chief of the tribe on behalf of the tribe to the said Sir Donald McLean, and was not at any time binding in law upon him the said defendant, or the other registered owners. The said promise is in writing, and is a record of the Native Office, and the defendant craves leave to refer to the express terms of the same.

8. As to paragraph 8, he admits the same.

9. As to paragraph 9, he admits the same.

10. As to paragraph 10, he denies the propositions of law therein stated.

11. As to paragraph 11, he denies the same, and in lieu thereof alleges that on the 1st day of December, 1886, the Native Land Court confirmed the order for the railway-line (76 acres 2 roods 26 perches), and for the 4,000 acres made on the 25th day of November, 1886, but did not then expressly confirm the order made on the 25th day of November, 1886, for the 1,200 acres intended to be given to the descendants of Te Whatanui, but then made an order in freehold tenure to him the said defendant of a parcel of land called "Horowhenua No. 9," containing 1,200 acres, so that he the said defendant might carry into effect the promise made to Sir Donald McLean as hereinbefore alleged.

12. As to paragraph 12, he denies the same and every allegation thereof, and avers that on and prior to the 1st day of December, 1886, the descendants of Te Whatanui and Mr. Lewis, Under-Secretary for Native Affairs, on behalf of the Government, had notified their acceptance of the block known as "Horowhenua No. 9" as a complete fulfilment of the promise made to Sir Donald McLean as aforesaid.

13. As to paragraph 13, he denies the same and every allegation thereof, and says that on the 3rd day of December, 1886, the Native Land Court made an order in freehold tenure in favour of him the said defendant as the beneficial owner thereof of 1,200 acres called "Horowhenua No. 14."

14. As to paragraph 14, he denies the proposition of law therein stated.

15. As to paragraph 15, he admits the sub-paragraphs (a) (b) (c) (d) (e) and (f), but denies sub-paragraph (g) and every allegation thereof. He admits the sub-paragraphs (h) and (i).

16. As to paragraph 16, he admits the same.

17. As to paragraph 17, he admits the same.

18. As to paragraph 18, he denies the same and every allegation thereof.

19. As to paragraph 19, he denies the same and every allegation thereof.

20. As to paragraph 20, he denies the same and every allegation thereof, and says that the Native Land Court had on the 3rd day of December, 1886, full jurisdiction to make the order which it did make in freehold tenure to him the said defendant for Subdivision No. 14.

21. As to paragraph 21, he denies that the voluntary arrangement was invalid, and denies the propositions of law stated in the said paragraph; and, further, avers that, with respect to the order in freehold tenure to him the said defendant for Subdivision No. 14, the Court challenged objectors before making the order.

22. As to paragraph 22, he denies the facts and the propositions of law therein alleged and stated, and says that, in fact, an order in freehold tenure for Subdivision No. 14 was duly and legally made.

23. As to paragraph 23, he denies the facts and propositions of law therein alleged and stated, and further denies that the matters therein alleged are relevant to the issues in this action brought pursuant to "The Horowhenua Block Act, 1896," which Act assumes the existence of Subdivision No. 14 as a subdivision duly made by a Court of competent authority.

24. As to paragraph 24, he repeats his answer, and further says, that upon the survey the subdivisions were altered in position and area, and that the Subdivision No. 14, referred to in "The Horowhenua Block Act, 1896," is the subdivision in respect of which the order in freehold tenure was made, and in respect of which the certificate of title issued to him the said defendant, and he expressly denies that the alteration in Subdivision No. 11 was made without the consent of the owners of that subdivision.

25. As to paragraph 25, he denies that he exercised or used any pressure or fraud as therein alleged.

26. As to paragraph 26, he denies the same and every allegation thereof.

27. As to paragraph 27, he admits the issue of the certificate of title, and denies that the same was wrongfully issued, and denies that he cannot claim protection under the provisions of the Land Transfer Act, and denies that he was then or at any time a trustee for Subdivision No. 14 for the persons named in the registered list or for any other persons.

28. As to paragraph 28, he admits the dealings specified therein, but denies that he was a trustee of Subdivision No. 14, or that any such dealings were in fraud of any trust.

29. As to paragraph 29, he denies that from the year 1874 and continuously therefrom the defendant Sir Walter Lawry Buller had been the solicitor and confidential adviser of him the said defendant, and he avers that in respect of the Horowhenua Block the defendant Sir Walter Lawry Buller never acted as the solicitor or confidential adviser of him the said defendant until the month of July, 1892.

30. As to paragraph 30, he denies the same and every allegation thereof.

31. As to paragraph 31, he admits that when he made the transfers and leases other than the lease of the 20th day of May, 1892, the defendant Sir Walter Lawry Buller was the solicitor and confidential adviser of him the said defendant; but as to the lease of the 20th day of May, 1892, he denies that when he made the same the defendant Sir Walter Lawry Buller was the solicitor and confidential adviser of him the said defendant; and he denies that any such transfers and leases were at inadequate values and rentals, but says that all the values and rentals were fair and just; and further, as a matter of law, he denies the relevancy of any of the allegations of paragraph 31 to the issues in this action.

32. As to paragraph 32, he says that in respect of the mortgage therein referred to, the defendant Sir Walter Lawry Buller was not the solicitor and confidential adviser of him the said defendant; but on the contrary, Mr. W. B. Edwards acted as the solicitor for him the said defendant in that matter. He denies that any matters whatsoever were concealed from him, and he says that the document was certified as correct for the purposes of the Land Transfer Act by Mr. W. B. Edwards, as his solicitor; and he denies that he was unaware of any matter which was provided in the said mortgage; and further, as a matter of law, he denies the relevancy of any of the allegations of paragraph 32 to the issues in this action.

33. As to paragraph 33, he denies that any matter was concealed from the Trust Commissioner, but avers that he and Mr. W. B. Edwards, as his solicitor, appeared before the Trust Commissioner. He avers that the Trust Commissioner had the deed in his possession for seven days. He denies that the Trust Commissioner abstained from making the inquiries therein referred to, and he further says that the Trust Commissioner sat as a Court of competent jurisdiction to determine the questions required by law to be determined by him prior to the granting of his certificate, and that the Trust Commissioner did grant a certificate under "The Native Lands Frauds Prevention Act 1881 Amendment Act, 1888," and that the same was final and conclusive, and he denies the right of the plaintiff to allege in this Court matters in contravention of that certificate.

34. As to paragraph 34, he admits the same, except that as to part of the land comprised in one of the leases the defendant Sir Walter Lawry Buller has not been in actual possession thereof as the same has been occupied by one Peter Bartholomew.

35. He alleges that the Subdivision No. 14 referred to in "The Horowhenua Block Act, 1886," is the Subdivision No. 14 in respect of which a certificate of title under the Land Transfer Act was issued, and he denies that any allegation of invalidity or insufficiency in the proceedings of the Native Land Court, or of the location of the said subdivision upon survey is relevant to the matters in issue in this action.

And for a further defence the said defendant repeats the allegations of his first defence, except so much of paragraphs 6 and 11 as conflict with this defence, and says:—

36. That if (as he denies) the 1,200 acres intended to be dealt with by the Court on the 25th day of November, 1886, and in respect of which a minute was made, but no location defined and no order drawn up, was the 1,200 acres now known as Subdivision No. 14, then the Native Land Court on the 1st day of December, 1886, after satisfying itself as to the consent of the registered owners, and the approval of the descendants of Te Whatanui and of the Native Department, by order allotted to him in trust for the descendants of Te Whatanui the block now known as "Horowhenua No. 9"; and that on the 2nd day of December, 1886, he applied to the Court to allot to himself personally as owner the block known as "Horowhenua No. 14," and on the 3rd day of December, 1886, after being satisfied that all parties consented to such application, the Court duly allotted Block No. 14 to him as owner thereof, and directed the issue of an order in freehold tenure to him.

And for a further defence the said defendant repeats the allegations of his first defence, and says:—

37. That the Native Land Court sat in the year 1886 for the partition of the Horowhenua Block, and an order in freehold tenure for Subdivision No. 14 was then made in favour of him the said defendant, and a certificate of title under the Land Transfer Act issued to him; and since then the said Maeha Keepa te Rangihwinui has dealt with the land as his own, and has received the rents and profits thereof; and no claim by any person as *cestui qui* trust, or as having any right, estate, or interest in the said Subdivision No. 14 was ever at any time made or suggested until the year 1895.

This statement of defence is filed and delivered on behalf of the defendant, Meiha Keepa te Rangihwinui, by Frank Cecil Beddard, his solicitor, whose address for service is at the offices of Messrs. Buller and Anderson, Solicitors, Featherston Street, in the City of Wellington.

E.

THE PUBLIC TRUSTEE AND ANOTHER v. SIR W. BULLER AND ANOTHER *re* HOROWHENUA.

[Shorthand notes taken by Mr. H. GORE of proceedings in the Supreme Court, on the 11th August, 1897.]

Mr. Cooper (who, with Mr. Stafford and Mr. Baldwin, appeared for the Plaintiffs) said,—If your Honour please, 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 a full sense of the responsibility 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 upon 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 to 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 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 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 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 on the other side will disagree with me—that, whatever view your Honour may 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 as between Major Kemp and the other Natives. It will 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 a 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 (who, with Mr. A. P. Buller, appeared for Sir Walter Buller) said: 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:—

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,

Mr. Cooper : First of all, in reference to the minutes of the decree, I think we should have a little time to consider those minutes, and that they should be settled before your Honour. Secondly, upon the question of how Major Kemp should be dealt with, I submit the proper course would be to strike Major Kemp out of the action. If the action is dismissed against Major Kemp, it should be distinctly stated that it is without prejudice to the position before the Native Appellate Court. I understand Sir Robert Stout agrees that this Court would not be able to pronounce judgment "Aye" or "Nay" in so far as Major Kemp's position is concerned. 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.

Mr. Bell : I understood my friend wished this question referred to Chambers.

Mr. Cooper : I am quite content that it should be referred to Chambers.

His Honour : Very well. I do not think there can be any question about costs.

Mr. Bell : What we propose to ask is for an order for the whole costs which the scale authorises you to make.

His Honour : I do not see how I can do that if there is no evidence before me.

Mr. Bell : We shall be able to bring evidence as to the enormous preparation in connection with this case. The issue to my client was one of very grave importance, quite apart from the question of a few acres of land.

His Honour : What is the value of the land?

Mr. Bell : £7,741. That is supposed to be the value of the land without improvements. I do not think it was the intention of the Act that we should have an action brought against us and be cast in very great expense, even though costs would be allowed to both defendants on the ordinary scale. I do not know what your Honour would consider a fair remuneration for reading the Horowhenua Commission. It was impossible for my learned friend Sir Robert Stout or for ourselves to have come into this Court without an enormous amount of work, if we are to do our duty, and to enable the Court to conduct the trial with a reasonable economy of the public time. We submit, therefore, that under the circumstances we are entitled to a certificate for the whole costs of the action. There is, of course, the limit of £300, but the Court can allow such sum as it may think proper above that.

His Honour : I have always understood the £300 limit was supposed to apply to a case where the scale costs would come to more.

Mr. Bell : I would submit there might be a case involving an amount of only £10. Suppose this land had been only a small piece of freehold, could it be said that we are to come here prepared to try a matter of immense private importance and of considerable public importance without the expenditure that is necessary to obtain the evidence, and in order to place it before the Court in something like proper shape? Here we have to come to the Court by statute, and it might pay a person in an ordinary case to pay, say, £200, rather than come to Court. In this case we have spent something like £100 in typewriting, and it cannot be contended that should be paid by the percentage. I am asking the Court to certify to the whole costs of the action.

Mr. Cooper : Between party and party?

Mr. Bell : We submit under that we should be entitled to the actual costs out of pocket—the amount we have paid, including counsel's fees.

His Honour : I have always thought the meaning of the rule is this : Suppose the value of this property was £100,000, then the percentage under scale costs would be too much. Then there is a limit of £300, although in another case scale costs might be allowed.

Mr. Cooper : I understand a double set of costs is asked for—one on behalf of Sir Walter Buller and one on behalf of Major Kemp.

Mr. Bell : There are two sets of solicitors and two sets of briefs.

Sir R. Stout : I submit, as far as Major Kemp is concerned, he is entitled to his own costs, as he had separate counsel, and the mere fact of his being drawn into this—

His Honour : I do not doubt about that; and if this case had lasted a long time—say, thirty days—there would be very little difficulty about the matter; but it is an important case in which a good deal of expense, probably, has been incurred, which has collapsed without money being earned in Court. I do not see how I can allow £300 without having some evidence before me on affidavit.

Mr. Bell : I am quite prepared to bring before your Honour evidence of actual expenditure out of pocket.

Mr. Cooper : I would suggest that the question of costs stand over for Chambers—that is, the scale upon which they are to be allowed—as I understand your Honour to rule that both the parties on the other side are entitled to their costs.

His Honour : I think both the defendants are entitled to their costs. The amount can be

fixed in Chambers. With regard to Bartholomew, all I am prepared to say is this: If a proposal is brought before me in any way that looks at all right I shall offer no objection. The decree generally is in favour of the defendants.

13th August, 1897.

DEAR SIR,—

Re *Horowhenua Block*.

The decree as arranged between you, Mr. H. D. Bell, and Mr. Cooper is agreed to. The original draft I have returned to Mr. A. P. Buller. The proposal to Mr. Cooper that the costs to be awarded to the defendant Meiha Keepa te Rangihwinui shall be as follows: (1) Statement of defence, £8 8s.; (2) preparing for trial, £10 10s.; (3) on judgment, £225; (4) witnesses' expenses; (5) Court fees, and the costs already awarded upon interlocutory proceedings is agreed to. I should like to have the items you claim under No. 5. The gross amount, I think, should be ascertained before the decree is sealed, and should be inserted in the decree as the amount adjudged by the Court for Meiha Keepa te Rangihwinui's costs. The amount referred to in a letter of even date sent to Mr. A. P. Buller includes the sum of £80 as a maximum amount for typewritten copies, that amount being the actual disbursement which I am informed has been incurred for typewritten copies for both defendants.

Yours faithfully,

E. STAFFORD.

F. C. Beddard, Esq., Solicitor, Wellington.

MINUTES OF DECREE AS AGREED ON BY SOLICITORS TO THE PARTIES FOR SUBMISSION TO THE COURT.

1. The name of the original co-plaintiff, Wirihana Hunia, having been struck out by order of his Honour the Chief Justice on the 7th day of August, 1897, on the application of the original co-plaintiff, amend the statement of claim by substituting the word "plaintiff" for "plaintiffs" wherever the latter word occurs, and making all consequential grammatical amendments.

2. The plaintiff, admitting that he can adduce no evidence to substantiate the charges against the defendant Sir Walter Buller alleged in the statement of claim, submits to a final judgment in favour of the said 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.

3. Decree that the validity of such and every of the dealings specified as aforesaid is established by final judgment in this action.

4. Decree that the dealing appearing upon the certificate of title for Division 14, Horowhenua Block, as Lease No. 2196, Keepa te Rangihwinui to Peter Bartholomew, is valid.

5. Decree that such and every of the dealings specified in sub-paragraphs (a) to (f) of paragraph 28 as aforesaid, and the said dealing, Lease No. 2196, registered on Certificate of Title, Vol. xlviii., fol. 148, Keepa te Rangihwinui to Peter Bartholomew, is and each of them are entitled to be reregistered pursuant to section 10 of "The Horowhenua Block Act, 1896."

6. Decree that this action be dismissed as against the defendant Keepa te Rangihwinui without prejudice to the determination of any matters which are, by "The Horowhenua Block Act, 1896," to be determined by the Native Appellate Court.

7. Adjudge that the plaintiff do pay to the said defendant Sir Walter Buller his costs of this action, computed, &c.

8. Adjudge that the plaintiff do pay to the defendant Keepa te Rangihwinui his costs of this action, computed, &c.

Approximate Cost of Paper.—Preparation, not given; printing (1,400 copies), £9 4s.

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