SESS. II.—1897.
NEW ZEALAND.

NATIVE AFFAIRS COMMITTEE

(REPORT OF, ON THE HOROWHENUA BLOCK ACT AMENDMENT BILL, TOGETHER WITH MINUTES OF PROCEEDINGS.)

Presented to the House of Representatives and ordered to be printed.

REPORT.

I HAVE the honour to report that the Native Affairs Committee, to whom was referred the above mentioned Bill, have duly considered the same, and are of opinion that it should be allowed to proceed without amendment.

13th December, 1897.

MINUTES OF PROCEEDINGS.

MONDAY, 13TH DECEMBER, 1897.

THE Committee met at 10.30 a.m. pursuant to notice.

Present: Mr. Houston (Chairman), Hon. J. Carroll, Mr. Field, Mr. Heke, Mr. Hunter, Mr. Kaihau, Mr. Monk, Mr. Parata, Mr. Pere, Right Hon. R. J. Seddon, and Mr. Stevens.

Minutes of previous meeting were read and confirmed.

Letter from Mr. F. C. Beddard, asking to be allowed to reply to certain written statement by a member of the Committee *re* Horowhenua, was read (see Exhibit A), and after discussion it was, on the motion of the Right Hon. R. J. Seddon, *resolved:* That the Committee cannot depart from the rule that counsel be not allowed to appear on behalf of a client, and therefore Mr. Beddard's request cannot be acceded to.

Petition No. 331, of Sir W. L. Buller, was then read, and, on the motion of Mr. Monk, it was resolved to postpone consideration until after the Horowhenua Block Act Amendment Bill had been considered.

Statement by the Hon. Sir R. Stout was read, on the motion of Mr. Heke. (See Exhibit B.)

The Horowhenua Block Act Amendment Bill was then brought up, discussion being taken down by shorthand-writer (see Exhibit C).

Hon. J. McKenzie being too unwell to attend, the Right Hon. R. J. Seddon explained the nature of the Bill.

The preamble was postponed.

Clauses 1 and 2 were passed without amendment.

Mr. Heke then moved, That further consideration be postponed until a copy of judgment of Supreme Court *re* case stated by Appellate Court could be obtained.

On the question being put, "That consideration of the Bill be postponed," the Committee divided, and the names were taken down as follow:—

Ayes, 3.—Heke, Hunter, Monk.

Noes, 6.—Carroll, Field, Houston, Kaihau, Parata, Stevens.

The motion was therefore lost, and the Committee proceeded with the consideration of the Bill.

Clause 3 was passed without amendment.

Clause 4: Mr. Heke moved to insert the words, "Six, nine, eleven, and twelve" after the first word of the clause. This was not agreed to; and, on the question being put, "That clause 4 as printed stand part of the Bill," the Committee divided, and the names were taken down as follow:—

Ayes, 6.—Carroll, Field, Houston, Parata, Pere, Stevens.

Noes, 3.—Heke, Hunter, Monk.

The clause therefore passed without amendment.

Clause 5: Mr. Heke moved to strike out the words "Public Trustee," and insert the words "Attorney-General" in lieu thereof.

This was withdrawn on the Hon. J. Carroll promising to inquire into the advisability of making the alteration, and, if no serious objections present themselves, to have the same made in the House.

Clause 5 then passed without amendment.

Clause 6 was passed without amendment.

Clause 7: Mr. Heke moved to strike this clause out; and, on the question being put, "That clause 7, as printed, stand part of the Bill," the Committee divided, and the names were taken down as follow:—

Ayes, 7.—Carroll, Field, Houston, Kaihau, Parata, Pere, Stevens.

Noes, 3.—Heke, Hunter, Monk.

Clause 7 therefore passed without amendment.

Clauses 8, 9 and 10 passed without amendment.

Preamble was passed without amendment, after discussion.

It was resolved that the Chairman report the Bill this day without amendment.

Petition No. 331, Sir W. L. Buller, was then considered.

On the motion of Mr. Monk, it was resolved, That the Chairman consult Mr. Speaker on the question of petitioner appearing at the Bar of the House, report of the Committee to be based on Mr. Speaker's reply.

The Committee then adjourned.

EXHIBIT A.

SIR,— Chomley Lodge, Davis Street, 11th February (*sic*).

I understand that your Committee will shortly have under consideration "The Horowhenua Block Act Amendment Act, 1897," section 4 of which would (unless expunged) summarily declare that my client, Major Kemp, holds Subdivision No. XIV. in trust, without allowing the Native Appellate Court to decide (as directed by Parliament) whether he does so or not. I learn also that a member of your Committee, who, at the recent argument in the Supreme Court of the case stated by the Native Appellate Court, appeared as counsel against Major Kemp, has now submitted to your Committee a memorandum in which he seeks to reopen some of the questions disposed of by the Supreme Court in Kemp's favour. I am aware, of course, that in doing so the gentleman in question was within his rights as a member of the Committee. But the effect is the same, and I would respectfully urge that I be permitted to see the memorandum and reply to it in such manner as your Committee may suggest. I have, &c.,

F. C. BEDDARD.

The Chairman of the Native Affairs Committee, House of Representatives.

EXHIBIT B.

STATEMENT by Sir R. STOUT *re* HOROWHENUA BILL.

To the Native Affairs Committee.

The Horowhenua Bill has been referred to this Committee. As I have been engaged as counsel in the litigation, I think it better I should not attend on the Committee when the Bill is being considered. The Committee has to perform judicial functions, and it is not proper that one who has been counsel on one side or another should now act as a judge. This is the same position as I took up in the Public Accounts Committee when the Midland Railway matter was being considered. I had been counsel in the dispute between the Midland Railway Company and the Government, and I therefore declined to attend the Committee when the petition of the company was being considered.

I may point out for the information of the Committee that the Committee would obtain useful information from a case stated by the Native Appellate Court for the opinion of the Supreme Court. That case gives a succinct sketch of the dealings with this block. I do not desire to enter into the merits of the dispute as between Major Kemp and the tribe, or between Major Kemp and Warena Hunia, or as to the litigation which has taken place in reference to Sir Walter Buller's titles. I may, however, state that the root of the trouble seems to have originated in the decision of the Native Land Court in 1886, when the block was partitioned. The Native Appellate Court states that the Native Land Court in 1886 purported to act under a voluntary arrangement which had been come to by the registered owners assembled at Palmerston North, by virtue of section 56 of "The Native Land Court Act, 1880." The statute provides that any voluntary arrangement come to should be formally recorded by the Court. This was not done. The non-recording of the voluntary arrangement, however, would possibly not affect its validity. The Court, however, proceeded on this voluntary arrangement, and did not, so the Native Appellate Court says, exercise any judicial discretion. It simply acted as an administrator to carry out what the registered owners had agreed to. Unfortunately, many of the owners were absent, and others were dead, and no successors had been appointed to the dead owners. How, if at all, a voluntary arrangement made under such circumstances can be binding will be for the Committee to consider. It seems to me that the owners who were not present, or who did not give their assent to this voluntary arrangement, have a strong ground of complaint against the action of the Court in 1886. Whether the Committee, or Parliament, or a Court should now interfere, or what the Committee should recommend under these circumstances, or under other circumstances that may be brought before the Committee in evidence, I do not think it is proper for me to say. I have thought it wise

to point out this salient point, as, judging from the Native Appellate Court's case, the Judges there seemed to pay considerable attention to this view of the matter.

The question whether the Natives who agreed to the voluntary arrangement intended that Major Kemp should have Block 14 for himself, or whether he should hold it as a chief for the tribe, or as a trustee for the tribe, I express no opinion upon. That, no doubt, will come before the Committee.

I may add that I have picked out this point about voluntary arrangement because, as I repeat, the Native Appellate Court seems to pay great attention to it; and because it seems to me that those who were not parties to the arrangement may consider that they have been aggrieved.

No doubt so-called voluntary arrangements have, in hundreds of cases, been given effect to, though all the registered owners did not concur in the arrangement. In such cases, however, the Native Land Court acted on its own views of the matter, and not, as here, as a mere administrator, taking the voluntary arrangement no doubt as evidence of what was proper or right to do. In this case, unfortunately, the Court did not, the Native Appellate Court says, so proceed.

9th December, 1897. ROBERT STOUT.

EXHIBIT C.

MONDAY, 13TH DECEMBER, 1897.

Mr. Seddon: I will give the Committee a brief account of what has happened, and state what has induced the Government to ask that clause 3 should be in the Bill, and the proceedings in the Supreme Court set aside, or simply held in abeyance. By the Act of last session it was decreed that a Native Appellate Court should be set up, and that this Court should decide on the facts in this matter, and in equity and according to Native custom—that is, so far as the dealings with the block or blocks mentioned in the Act itself are concerned. There was a question of English law as affecting the trusts, or of a person dealing with one of the blocks—Division 14 being a trust, or which might possibly be found by the Appellate Court to be a trust, and I wish members to mark that—and if upon such finding it was found to be a trust, then the Supreme Court was to decide in accordance with English law whether or not Sir Walter Buller, who had had dealings with one of the trustees or the trustee, had had notice of such trust. The Native Appellate Court, set up to decide the question whether there was a trust or not, sat and took evidence, and then, instead of finding whether it was or not, sent a large number of questions to the Supreme Court to be answered for the guidance of the Appellate Court. In the meantime, as by Act the Public Trustee had to initiate proceedings within a certain time, these proceedings had been initiated, but application was made to the Supreme Court to adjourn the matter until the finding of the Appeal Court was given. The Chief Justice, I think, committed an error of judgment and refused to grant the adjournment. Without the Appellate Court having found on the facts it was futile to deal with the contention as to whether Sir Walter Buller had had notice of a trust or not, because there was nothing before the Court to show there was a trust except the Supreme Court finding previously given at Wanganui, which said there was a trust between one of the blocks, and that Kemp and Hunia were trustees of it. What happened was this: The Public Trustee—you have heard it said in the House that the Minister of Lands was practically the principal and the Public Trustee was simply the agent; but, unfortunately for all concerned and Parliament, we did not say so, but left it entirely to the Public Trustee, who, against the Minister's desire, and the adjournment having been refused, decided, on the advice of counsel, to accept the finding of the Court, with the result, as you know, that the Public Trustee practically gave consent to the finding which under the Bill is sought to be voided; and immediately upon this the flood-gates were let loose about costs and putting in the bailiff in the Public Trustee's office. As far as the Government are concerned, we wish to have the will of Parliament, as originally expressed by the Act, given effect to; that there should be a finding first by the Appellate Court, and after that that the Supreme Court should deal with the case with respect to this Block 14 and Sir Walter Buller's position. Matters must remain in abeyance until the Appellate Court has decided whether there is a trust or no trust. No title can be issued, and the whole thing is hung up, like Mahomet's coffin—no title can issue and no title can be set aside, unless the Appellate Court finds there was no trust at all, and that would complicate matters more than ever. Therefore, this clause was intended to go back to the original position—namely, that the Appellate Court must first find as to dealings with this land, and whether there was a trust or there was not a trust, and then let it go to the Supreme Court.

Mr. Field: But if the Appellate Court found there was no trust, no action could lie.

Mr. Seddon: That is so: as matters now stand it is the cart before the horse.

Mr. Heke: Do you not think that was intended by the Legislature last year?

Mr. Seddon: Certainly not. The Supreme Court has practically said to the Native Appellate Court, "You have no right to reserve for our decision questions of fact which you must decide for yourselves," and sent the questions back. The Appellate Court having received them back, it would be wrong if, owing to the state of things on the part of the Appellate Court, you were to say that that was what was intended by Parliament.

Mr. Monk: But can we determine that the action of the Supreme Court was wrong?

Mr. Seddon: The Appellate Court was to find on the facts first, because, until it was found it was a trust, how could they say anything about the dealings with the land? This clause 3 is a suspensory clause pending the finding of the Appellate Court.

Mr. Heke: Clause 4 renders that nugatory altogether. It orders another hearing and brings on another case. As far as I understand from you, the case for the Appellate Court is referred back by the Supreme Court to it for consideration; and, if that is the position, why should we interfere? The Appellate Court can sit and bring the matter forward for its decision, and then, after that is done, action can be taken in the Supreme Court if necessary.

Mr. Seddon: The functions of the Supreme Court and the Public Trustee are gone unless we pass this clause—they are exhausted. The Public Trustee cannot go on again unless we pass this Bill, because the six months specified in the Act of last year have expired.

Mr. Stevens: The Horowhenua Block Act was passed for the purpose of preventing the question being referred to any other Court while the statutory Court was open, and that was the Appellate Court.

Mr. Seddon: If you look at the original Act you will find that, though we never expressed it, it was contemplated from the start that there must be a finding on the facts by the Appellate Court. If we had stated in the Act that after the Appellate Court had made its finding the Supreme Court action could be taken we should have had no trouble whatever.

Mr. Stevens: The Appellate Court did not find there was a trust, but in the meantime the Public Trustee, in accordance with the Act of last year, was required to issue a writ in the Supreme Court to ascertain whether Sir Walter Buller had any knowledge of the existence of a trust when he dealt with Division 14. The Public Trustee's solicitor practically said, "I will take out the writ and carry it in my pocket—I will carry it twelve months if I think it desirable to do so—because I am going to withhold this writ until the Appellate Court has found upon the facts." But the other side said, "No, we will not allow you to hold the writ"; and they issued a summons compelling the Public Trustee to proceed with the case in the Supreme Court. Now, that is absolutely not what the Legislature intended. I was engaged in the case at one time, but am not now, and I have no other desire than to do what is right as between the parties. The question is: Was it ever contemplated that the Public Trustee should go into the Supreme Court before the Appellate Court had had an opportunity of coming to a decision? That is the whole position; and, if there is any semblance of hardship, I say that Sir Walter Buller and his solicitors have brought it upon themselves by their action. The whole blame rests on the Native Appellate Court. Instead of taking upon themselves the responsibility of giving a decision they submitted these questions to the Supreme Court. They relied on the evidence of Judge Wilson, who was the presiding Judge at the time the so-called voluntary arrangement was made. Judge Wilson came before the Royal Commission which was set up and gave his evidence there. He then came before the Appellate Court and gave evidence there also; and I will show you that Judge Wilson's evidence was as absolutely untrue as any words that ever came out of a man's mouth. The contention of the solicitors for Sir Walter Buller was that the evidence of the presiding Judge must be taken as paramount—that it was quite impossible for any other evidence to do away with the evidence of the Judge; but the Supreme Court here has held differently. It has held that the evidence of Judge Wilson need not be accepted as paramount by the Appellate Court. To put the thing shortly, to my mind the mistake made by Sir Walter Buller and his solicitors was forcing this question into the Supreme Court instead of allowing the Appellate Court the usual time to carry out its functions. They having accepted that position, if there is any kind of hardship they have brought it upon themselves. But there could be no hardship when we only want one thing—that is, to get at the facts. There is not a single member of this House who will look dispassionately at the position and say that it was not a trust. There is overwhelming evidence to that effect, except that of Judge Wilson. Here was a block of land cut off for the purpose of satisfying the claims of the descendants of Te Whatanui. Nicholson, on behalf of the tribe, came into the Court and said, "I will not have the land there. I want the land down at the lake; that is not the land where my grandfather died." In the meantime they cut the land off and put it in Kemp's name. Subsequently they refused to have the land, No. 14, and how did it become Kemp's? There was a meeting, and it was said that the Muaupoko had agreed that Kemp should have it for himself. Nothing of the kind. There was the evidence of one witness only—there was one woman who said that Kemp should have it for himself. Is it reasonable to suppose that one woman in a meeting of fifty or sixty people should be able to bind the others?

Mr. Monk: What about Nicholson?

Mr. Stevens: Nicholson has taken No. 9—that is for the descendants of Te Whatanui. It was intended that he should not have No. 3, because the first they cut off in the subdivision of the block was for the railway, secondly for the township, and thirdly for the satisfaction of the claims of Te Whatanui; and that was No. 3, but by some device they had written 14 over the top of it. Then, when the survey was made there were 518 acres short, and they took out a piece of No. 11 without it being taken before the Court, because 14 was intended to have been taken out of No. 6. Then there was not sufficient residue in that block for the Rerewaho, and they telescoped it down to near Waiwiri. Then, instead of it being Block 3 on the official plan of the Court, the figures 14 are written over No. 3. To my mind it is perfectly clear that it is necessary to have a proper inquiry in this matter. The action by Sir Walter Buller was for the purpose of burking the decision of the Appellate Court, and getting a judgment of the Supreme Court on a purely technical point of English law.

Hon. J. Carroll: The position, as far as I can understand it, is this: In 1895 an Act was passed suspending all operations in respect of the Horowhenua Block and its divisions. Under that Act a Commission was set up to inquire into the whole of the proceedings affecting the Horowhenua Block, of 52,000 acres. As a result of their investigations the Royal Commission reported duly, and found that Subdivision 14 was held under trust by Major Kemp. Legislation was framed upon the Commission's report, which legislation is contained in the Horowhenua Block Act of 1896, referred to now as the principal Act. In section 7 all dealings with the divisions 6, 9, 11, 12, and 14 were prohibited. Then, in section 8 of the same Act, it refers to Division 14 as follows: "A certificate of title for any portion of Division 14 aforesaid of which any valid alienation in fee-simple had been made as aforesaid, in the name of the person or persons entitled by virtue of such alienation: Provided that no certificate of title as last mentioned shall be issued except pursuant to final judgment in the proceedings hereinafter directed to be instituted by the Public Trustee." Then, in section 10 of the principal Act it refers to cancelled dealings, and provides that they may be

re-registered: "For the purpose of testing the validity of the alienation referred to in subsection (*f*) of section 8 hereof, and also all dealings the registration whereof has been cancelled as aforesaid, the Public Trustee is hereby directed and empowered to institute on behalf of the original registered owners of the said block, as set forth in the second and sixth schedules hereto, or any of them, such proceedings in the Supreme Court at Wellington as may be necessary for that purpose within six months from the date of the passing of this Act, and every dealing the validity whereof is established by final judgment in such proceedings shall be entitled to be re-registered on any new certificate of title issued under the provisions of this Act for the land the subject of such dealing." There was dual authority given under this Act: first of all there should be an Appellate Court to inquire into the circumstances of the trust reported on by the Commission; then, within six months of the passing of the Act, the Public Trustee should undertake certain action to determine the titles affecting those who had alienated by sale, mortgage, or lease, and how such affected the beneficiaries. Major Kemp mortgaged to Sir Walter Buller as absolute owner.

Mr. Monk: And the result has been that his title was suspended.

Hon. J. Carroll: Yes. Going from that, the latter part of the preamble which recites these points will clearly show the position sought to be acquired by this Royal Commission. [See preamble of Bill.] That shows that the action to be taken by the Public Trustee in the Supreme Court was dependent, or was intended to be dependent, on the finding of the Appellate Court. Well, the Appellate Court, having undertaken its work of investigation, refused—or, at any rate, did not take—the responsibility of deciding the questions of fact within the six months the Public Trustee had, under instructions of the principal Act, to move in the Supreme Court. So that when he did move in the Supreme Court, the Appellate Court had not found on the facts, and there was no case for the Public Trustee to take before the Supreme Court at all. The Supreme Court would not postpone the matter until the question had been settled by the Appellate Court, but took the stand that the six months given under the Act were up, and therefore the case could not be postponed. The Public Trustee had no case, and the whole thing went by default; and yet the Appellate Court was specially directed by Parliament to find out the facts and trusts in Division 14, which work it had not done. It is an anomalous position, and the legislation we propose this time is to declare a trust, and in the meantime suspend the decree given in Wellington by the Supreme Court.

Mr. Field: If the Public Trustee had elected to proceed, and the Suprem eCourt had elected to go into the case itself, a very peculiar complication might have arisen. There is no appeal from the Appellate Court, and one Court might have decided there was a trust and the other might have decided there was no trust.

Mr. Monk: It seems to me we ought to have some one here to explain the position of the Appellate Court. It seems extraordinary that such a body as the Appellate Court went to a certain point, as you maintain, and that their proceedings were not made complete.

Hon. J. Carroll: That is without doubt, because they referred certain questions to the Supreme Court, and pending answers to these questions they adjourned their Court.

Mr. Monk: But what reason had a superior Court to refer to an inferior one?

Hon. J. Carroll: But they did; that is a matter of fact. That they had no right to do so is borne out by the decision of the Supreme Court, which referred the questions back to the Appellate Court, and said, "You are the Court to decide these points." Clause 3 really means suspending the decree given by consent in the action instituted by the Public Trustee, because, if you look at the following sections you will find they give further power to the Public Trustee within two months of this Act coming into operation to institute an action in the Supreme Court.

The Chairman: Why not a similar action?

Hon. J. Carroll: Because this Act declares right off Division 14 to be a trust block. Then it is perfectly plain that the Public Trustee will act on behalf of the Muaupoko Tribe.

Mr. Monk: You are claiming that the Appellate Court had no power to investigate whether Kemp was owner or trustee. I thought that was one of the issues.

Hon. J. Carroll: I do not claim so. The Appellate Court was directed to ascertain matters of fact in respect to a trust alleged by the report of the Commission to exist in Division 14 of the Horowhenua Block.

Mr. Monk: But when it comes before the Appellate Court that Court omits to give its decision, and passes it on to the Supreme Court.

Hon. J. Carroll: The decree of the Supreme Court is in favour of Kemp and Sir Walter Buller: that where any transaction has been effected according to law, and there were no fraudulent circumstances relating to it, the title was to pass in respect to any instrument of disposition at the time covered.

Mr. Monk: Up to that point Kemp was the owner.

Hon. J. Carroll: Unless Sir Walter Buller was aware at the time of the existence of the trust. If he was aware, then the transaction was illegal.

Mr. Monk: It is so complex, to my mind: that some individual, being a trustee, can perform an illegal transaction, validated in the Supreme Court of the land, and yet part of the same property, held by the same instrument, whether a trusteeship or ownership, is determined by this Bill to be a trust.

Mr. Heke: I recognise that we do not understand the position properly at present, and, to enable the Committee to get some guidance, I think we should have before us the decision of the Supreme Court referring back the matter to the Appellate Court; and I move, That the consideration of the Bill be postponed, to enable the Committee to have the decision of the Supreme Court before it.

Mr. Stevens: That means that this Bill is not to be passed this session. I say you should have armed yourselves with all the information, because you have had more than a week's notice. If we are going to postpone the consideration of this Bill for any consideration whatever, it means that the Bill is not to pass.

Mr. Heke: I was under the impression that Mr. Carroll or the Premier would have the information ready for submission to the Committee.

Mr. Monk: The fact is this: I want to do what is right, and do not want my name mixed up with any indifferent action afterwards. I feel that I have now to go and study up the point and I would like two or three days to inform myself, so that I may come to an intelligent opinion regarding the Bill.

Hon. J. Carroll: The whole thing is set out in the recital.

Mr. Heke: I would like to know the true position of the question referred back by the Supreme Court to the Appellate Court; and I would like to know further the position the Supreme Court took.

Hon. J. Carroll: The Supreme Court merely decided that the questions submitted to it by the Appellate Court were matters which ought to be decided by the Appellate Court itself. Mr. Heke wants this Bill postponed so that the decision of the Supreme Court may be obtained. As a matter of fact, the Supreme Court gave no interpretation of the questions placed before it. It would not deal with the matter, and said the Native Appellate Court was the proper tribunal to decide it.

Mr. Monk: Sir Robert Stout points out in his memorandum that there was a voluntary arrangement.

Mr. Stevens: My contention, and the contention of four-fifths of the witnesses, is that it was not a voluntary arrangement.

Hon. J. Carroll: This legislation was passed on the report of the Commission. From then down to the present moment the facts that come into existence are of importance to us.

Mr. Heke's motion negatived, and clause 3 agreed to.

Clause 4.

Mr. Heke: I want to take the opportunity of widening the scope of the Bill, and propose an amendment to add the following words after the word "division" in the first line—"6, 9, 11, 12, and." The object of my doing this is to enable these divisions of the Horowhenua Block to be declared Native lands. When the Court sat in 1873, an application for rehearing was lodged on behalf of Te Whatanui's descendants. This application was dismissed, although lodged within the the time specified by the then law. No reasons were given; and to enable the case to come before the Native Land Court again for investigation, I move that these divisions be declared Native lands. What I maintain is that the descendants of Te Whatanui have a clear right to the Horowhenua Block.

Hon. J. Carroll: There would be a difficulty in that. The only division that is under consideration at the present moment and for which this Bill is necessary is division 14.

Mr. Stevens: The descendants of Te Whatanui had a right under the principal Act, and they set up their claim before the Appellate Court.

Mr. Heke: That was regarding a particular division—No. 9.

Mr. Stevens: And also the land south of No. 9.

Mr. Heke: But it was not wide enough. It was not equivalent to a new investigation of title.

Mr. Stevens: It was, so far as these two blocks are concerned.

Hon. J. Carroll: I would also point out that on these divisions referred to by Mr. Heke decisions have been given and titles ordered. The only one not determined by the Appellate Court was this division 14, which is the subject of our investigation now.

Mr. Heke: I am not going to press the matter. I am only going to take a vote.

Mr Field: There are two subdivisions as alternative allocations. They decided to take one and leave 14. The consequence was that division 14 reverted to its original position and became part of the block.

Mr. Heke's motion negatived by 7 to 3.

Clause 5.

Mr. Heke: I desire to move an amendment in line 29 of the page, to strike out the words "Public Trustee," with a view of inserting the words "Attorney-General." I think it is better to move this out of the hands of the Public Trustee, because the Public Trust Office is a business institution with which a lot of private persons and Natives are connected, and if the Public Trustee is placed in the position of prosecuting and getting into litigation there will be an amount of odium attached to the office, and persons who have imprests conducted by or under the institution may be disposed to have nothing to do with it. I think the action should be taken by the Government, and by placing the Attorney-General in the clause instead of the Public Trustee it brings the case into the hands of the Crown, and the Crown has to take action.

Hon. J. Carroll: We could put in a proviso to protect the Public Trustee. However, I will take a note of the amendment, and see if there is any particular objection to it.

Clause 6.

Mr. Monk: I should like to mention that our position is something extraordinary. This Bill sets aside every decision on this land except the division given by a Commission of laymen.

Mr. Stevens: Not a Commission of laymen, because the Commission was presided over by one of the cleverest solicitors in the colony.

Hon. J. Carroll: Before any action was taken the Supreme Court had decided that there was a trust.

Mr. Monk: Is there a decision that there is a trust? The Supreme Court declares otherwise.

Hon. J. Carroll: It declared there was a trust in one of the other divisions, and it ordered that the Native Land Court should define that trust, and when this was set up by the Legislature they thought fit to make it include other sections of the block. Since then the Commissioners reported that Division 14 was also a trust. But this clause 6 lays down the lines on which the Supreme Court should make its investigation. This is only in regard to alienations that have taken place.

Mr. Monk: I do not like opening up reinvestigations in such matters, and would prefer to take a division on the clause.

Clause, on division, agreed to.

Clause 7.

Mr. Heke: I move that clause 7 be struck out. The question of payment of costs can be brought in by the Government specially without causing this Bill to be an appropriation Bill.

Hon. J. Carroll: What purpose would that serve? What is the objection to the provision here, that the costs of such inquiry or action shall be attached to the land?

Mr. Heke: It limits the action of the Legislative Council.

Hon. J. Carroll: I can quite understand Mr. Heke's point. He holds, like a good many others—and I am inclined the same way myself—that there are claims of people who are entitled to certain portions of that land who were left out in the original investigations or were unfairly dealt with; and he is afraid that the appropriation clauses of this Bill will preclude the other branch of the Legislature from taking into consideration the claims of these people.

Mr. Heke: These clauses are making the Bill an appropriation Bill, and the effect of that is to limit the action of the Legislative Council. I would like to take a division on the clause.

Mr. Wi Pere: I think it would be better to commence the whole hearing of the entire block again, and not to let any Judges or the Supreme Court have anything to do with it. Let the Maoris investigate it.

Mr. Monk: I think that is an allowable feeling, and a very sympathetic one too, but all this means immense cost.

Mr. Parata: Assuming that we set up a tribunal of Maoris, they must claim their expenses.

Mr. Wi Pere: If this clause 7 is passed will it mean that the Judges will not be paid? However, it is no good my objecting to this clause being passed, seeing that the preceding clauses have been passed.

Clause on division agreed to.

Clause 8 agreed to.

Clause 9.

Mr. Wi Pere: I think this clause ought to be altered so as to provide that the Maoris should pay the Public Trustee's charges.

Hon. J. Carroll: I think it is better as it is, that Parliament should appropriate the amount. The Public Trustee is threatened with all the horrid forms of law, such as bailiffs being put into his house, and that sort of thing.

Mr. Wi Pere: Is the land to be appropriated?

Hon. J. Carroll: In the future action the costs of such shall be placed on the land.

Mr. Field: There is no provision here for saddling the land with costs already accrued.

Hon. J. Carroll: No.

Clause 9 agreed to; also clause 10.

Preamble.

Mr. Monk: We do not understand this preamble. It lacks confirmation, and it is asserted commonly that this preamble makes many assertions that are not correct.

Hon. J. Carroll: They are mere matters of fact and citations.

Mr. Monk: There is Sir Walter Buller's petition.

Hon. J. Carroll: Sir Walter Buller merely states generally that "Your petitioner is prepared to prove that many of the recitals contained in the preamble to the said Bill are not in accordance with fact."

Preamble agreed to.

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