1898.

NEW ZEALAND.

THE HOROWHENUA BLOCK.

MINUTES OF PROCEEDINGS IN THE NATIVE APPELLATE COURT ON THE APPLICATIONS OF HETARIKI MATAO AND OTHERS FOR AN ORDER DECLARING KEEPA TE RANGIHIWINUI TO BE A TRUSTEE FOR DIVISION NO. 14, AND FOR OTHER RELIEF.

Presented to both Houses of the General Assembly by Command of His Excellency.

SYDNEY STREET SCHOOLROOM, WELLINGTON, 14TH APRIL, 1898.

THE Court opened at 10 a.m.

Present: G. B. Davy, Chief Judge (presiding); A. Mackay, Esq., Judge; W. J. Butler, Esq., Judge; A. H. Mackay, Clerk.

[NOTE.—This is not the Court convened under provisions of "The Horowhenua Block Act, 1896."

Application by Hetariki Matao and another, also by Rihipeti Tamaki and another, that Major Kemp be declared a trustee in Division No. 14, and for other relief.

Sir R. Stout and Mr. Baldwin for Hetariki Matao and Maata Huikirangi.

Mr. Stafford for Rihipeti Tamaki and Wirihana Tarewa.

Mr. H. D. Bell and Mr. A. P. Buller for Major Kemp and Sir Walter Buller.

The Court decided to take the cases separately, and called on the application of Hetariki Matao and Maata Huikirangi.

When the petition was called on,

Mr. Bell claimed that before dealing with the matter the Court should first give its judgment upon a matter affecting Major Kemp in connection with Block 14, which had already been argued for its decision.

Sir Robert Stout: That is not the present Court.

Mr. Bell submitted that it was the same Court, no special Court being set up by the Horowhenua Block Act. For all they knew, the judgment referred to might show that Major Kemp had no interest in the case now brought, and, if so, why should he be put to the cost of having to pay for counsel to watch the case on his behalf? He submitted with the greatest possible respect that what he was asking was only bare justice. He was asserting no more than the bare right of every litigant to have the determining of the Court before which he was tried. To some extent he could plead *res judicatur*. But another reason was that the Land Transfer titles of his clients were suspended pending the delivery of the judgment to which he had referred. His position there was gravely prejudiced by the fact that he had not a Land Transfer title. He submitted that the Court would not allow such an advantage as that to be acquired by the other side merely because the Court had not yet delivered its judgment.

After some argument between counsel,

Mr. Bell, continuing, contended that the Court should not be asked to suspend its judgment in order that another proceeding under another section might be wedged in, and the Courts be invited in this jurisdiction to deliver a judgment which might absolutely contravene the judgment arrived at under special jurisdiction.

Sir Robert Stout said this was certainly amusing. So far as the parties interested in the Horowhenua Block Act were concerned, they were desirous that the whole question in dispute should be settled by the highest tribunal in the land—the Court of Appeal. What happened was that the Court of Appeal decided on but one point, and his learned friend had struggled hard to stop the Court getting the merits of the case. And then he came and asked for justice.

Judge Davy: He is not asking to stop you. It is entirely a question of the order of business.

Sir Robert Stout said this was not so. Mr. Bell wanted to get the decision of the Court to get certain Native land titles registered, and block the Native Appellate Court.

Judge Davy said there was nothing to show this.

Sir Robert Stout asked what else was desired. The fact was the Court of Appeal had been blocked, and the petitioners were now there to appeal under the jurisdiction of the Appellate Court. They were now raising more than they were allowed to raise under the special Court, therefore the special Court's judgment could not be applied to them. The special Court under the Horowhenua Block Act had simply to sit as a Court under the Native Equitable Owners Act. He submitted that the petitioners were entitled to have the present case heard now, upon the ground that the judgment in the other case might prejudice them. Surely the Court, as a Court of equity, would struggle hard to see that every person got his rights, and that justice was done. And justice would be thwarted by following the course proposed by the other side.

Mr. Bell contradicted this. If the judgment was against him (Mr. Bell) Kemp need not appear in the present case at all, and if the judgment was in his (Mr. Bell's) favour he wanted to plead *res judicatur*.

Sir Robert Stout submitted that it was not a *res judicatur* case, and contended that the special Court had been refused permission to deal with matters now before the present Court. To deal with the other judgment first would be wrong. It would further complicate this already complicated matter. The Court should hear this present application, and then say what should be done. As to Major Kemp, he was interested in the block in any case, either as trustee or owner.

Mr. Baldwin, following up Sir Robert Stout's argument, asserted that the matter now submitted to the Court by the present petition was entirely different from the other case.

Mr. Bell said he had evidently failed to make his contention plain to his learned friends, and he briefly recapitulated his points.

The Court adjourned for half an hour, and on resuming gave the following decision: "The Court has taken into consideration the application by Mr. Bell that before proceeding with the present matter the Court should deliver its judgment upon the question which was specially submitted to it under 'The Horowhenua Block Act, 1896'—viz., the question whether or not there was a trust intended by the Native Land Court in respect of the award to Meiha Keepa te Rangihiwinui of Division 14 of the Horowhenua Block. The Court is prepared with its judgment on that question, and we are of opinion that it would be convenient that it should now be delivered. We decide, therefore, to adjourn the further hearing of this case to enable judgment to be given upon the question aforesaid."

Case adjourned till 2 p.m. of the 15th instant.

The Court adjourned till 2 p.m. of the 15th instant.

The Chief Judge then left the bench.

Mr. Bell applied for costs, as the decision was in favour of his client. Mr. Baldwin opposed the application. The Court reserved the question of costs.

Mr. Bell asked that order be sealed to-morrow. The Court consented.

The Court adjourned from time to time till the 18th instant.

JURY ROOM, SUPREME COURT BUILDINGS, MONDAY, 18TH APRIL, 1898.

The Court opened at 10.15 a.m.

Present: G. B. Davy, Esq., Chief Judge (presiding); A. Mackay, Esq., Judge; W. J. Butler, Esq., Judge; A. H. Mackay, Clerk.

Application of Hetariki Matao and another.

Sir Robert Stout and Mr. Baldwin appeared for the petitioners; Mr. Stafford and Mr. Baldwin for Wirihana Tarewa and Rihipeti Tamaki; and Mr. H. D. Bell and Mr. A. P. Buller for Sir Walter Buller and Major Kemp.

Sir Robert Stout informed the Court that since the case had last been before it one of the parties (Major Kemp) had died. Following the Supreme Court procedure, it would be necessary to ascertain the successors, and for them to appear in the case. Who these successors were was not known yet, therefore it was impossible for him to go on with the case until this information was obtained.

Judge Mackay: So far as is known Kemp had only one daughter.

Sir Robert Stout: Well, we can serve her or her successors.

Judge Mackay: That will take you some time.

Mr. Bell: If there is a will we will accept service for her.

Chief Judge Davy pointed out that this could not be ascertained until probate had been granted, which would take at least a month.

Sir Robert Stout concurred in this, and stated that that was his reason for asking for the adjournment. He asked also that no order under section 5 of the Horowhenua Block Act should be issued until the present case had been disposed of.

Mr. Bell: The order has been signed, sealed, and delivered to the Land Transfer Office.

Sir Robert Stout said he intended to submit in regard to this that there was no power for Kemp to apply for such an order. The only order that could be issued was on *cestuis que trusts*, and it had been decided that Kemp's had not been a *cestui que trust*.

Mr. Bell said that no doubt his friends would exhaust every remedy—they were bound to do that. The whole thing was persecution.

Sir Robert Stout: My friend can say nothing of persecution.

Mr. Bell: I have the right, and I cannot help saying it is persecution.

Sir Robert Stout: My friend has only himself to blame. He should have allowed the Supreme Court to deal with the matter when it came before it instead of blocking it.

Mr. Bell: My friend is making a statement entirely incorrect.

Sir Robert Stout: In what way?

Mr. Bell: Regarding the Supreme Court. I hope my friend will not make that statement again, as its repetition will cause a flat contradiction.

Sir Robert Stout: I will make it again.

Chief Judge Davy: What do you intend to do?

Sir Robert Stout: Well, the order has been issued.

Chief Judge Davy: An order has been issued! Have you seen the order?

Sir Robert Stout: No, I have not.

The order was here produced and consulted.

Sir Robert Stout: I do not think this is an order under section 5.

Chief Judge Davy: It is not intended as an order under section 5. It is merely an interlocutory order.

Mr. Bell said he did not admit that it was an interlocutory order.

Chief Judge Davy: It is a matter for the Land Transfer Office what the effect of it is.

Mr. Bell then submitted that Sir Walter Buller was a person entitled to be represented in the present action, he being lessee, mortgagee, and holder of part of the freehold of the land in question. There must be some means by which the Native Appellate Court would provide reasonable procedure. He was there representing a person to a large extent beneficially interested. Surely every person interested in the block was, in proceedings of this kind, entitled to be heard, just as much whether he possessed only part or the whole of the land He submitted that the Appellate Court had the right to decide a course of procedure in such matters. He had an application to make which really took precedence of Sir Robert Stout's application for adjournment. He made this application on behalf of Sir Walter Buller, and he would repeat it on behalf of Wikitoria (Kemp's daughter) as soon as the Court held that he was entitled to speak for her. It was an application made under "The Native Land Court Act, 1894."

Sir Robert Stout wanted his application dealt with first. How could the Court deal with an application in a case one of the parties to which was dead?

Mr. Bell said Sir Walter Buller was a party to the case now before the Court.

Mr. Baldwin: How does he become a party?

Chief Judge Davy: I think we are becoming mixed.

Mr. Bell said the reason he wished his application heard before the Court granted an adjournment was that it was necessary that his application should be made before the Court did anything in the case. He was bound to make the application at the earliest opportunity.

Sir Robert Stout: I do not understand that Sir Walter Buller is before the Court at all. He has not been served. I do not know how he came here.

Mr. Bell: Whom did you serve?

Mr. Baldwin: Kemp.

Sir Robert Stout understood that Mr. Bell wanted to ask for security for costs for Sir Walter Buller. But why? Sir Walter Buller was not wanted there at all.

Mr. Bell: I have no doubt you do not want him here.

Chief Judge Davy: Then, your application, Mr. Bell, is on behalf of Sir Walter Buller, that before proceeding with this petition the petitioners should be required to deposit a sum of money as security for costs?

Sir Robert Stout said he had several objections to make to that. First, that Sir Walter Buller was not a party to the proceedings; second, no relief was asked against him; third, the special jurisdiction conferred upon the Native Appellate Court by the Act of 1895 gave the Court the same powers as the Supreme Court. The Appellate Court would therefore follow the analogy of the Supreme Court, and the Supreme Court in such cases as the present ordered security for costs. As to his own application for adjournment, he submitted that before the Court could proceed with the case the proper parties to it must be ascertained, and this could only be done by ascertaining the successors to Major Kemp. The Court could do nothing until the representatives of the late Major Kemp were before it.

Chief Judge Davy said the first question was whether Mr. Bell was in a position to appear before the Court.

Mr. Bell then proceeded to argue his right to be there on behalf of Sir Walter Buller on account of his interest in the land concerned. He had never heard such an argument as was suggested by the other side. Was it to be said in any Court of law or equity that a man who had a title was not to be heard as to whether that title was to be quashed? That was Sir Walter Buller's position.

Mr. Stafford said the Court had no jurisdiction over Sir Walter Buller.

Mr. Bell said it was comical to hear his friends saying that Sir Walter Buller could not be heard.

Chief Judge Davy pointed out that if Sir Walter Buller were introduced into the case it would not be a case between Natives and Natives.

Mr. Bell asked: If the Natives questioned the certificate of title, what was to become of Sir Walter Buller? If the Court said it would hear no party interested excepting those set out in the petition it was surely laying down a rule that the Court would proceed contrary to the rules which governed Courts of equity. This was a far more important matter than the question between the petitioners and Sir Walter Buller and Major Kemp. It was a question whether Maoris were to be allowed to come there and be heard with Maoris only as defendants, the Court refusing to hear those persons the Maoris had dealt with. Surely the Court would not lay down such a ruling. Why, there might be collusion between the parties, and weak or useless argument submitted by the nominal defendant.

Chief Judge Davy: Has this Court any evidence before it that Sir Walter Buller has any interest in this land? Have not all titles been swept away?

Mr. Bell: A judgment of the Supreme Court has been given which has restored the titles of Sir Walter Buller.

Sir Robert Stout: We are not attacking Sir Walter Buller's titles.

After further discussion,

Sir Robert Stout said, regarding the security for costs, that if what Mr. Bell had contended was correct his request was too late, for already the case had been advanced without security being asked for.

Mr. Bell: No.

Sir Robert Stout: Pardon me, but you applied for adjournment, and this waived your right to ask for security.

Mr. Bell: I was very careful. I said "before any proceeding is taken."

Sir Robert Stout: I do not care what you said, the course was taken.

After further argument the Court, having retired for a brief period, ruled that Mr. Bell had no *locus standi*. Sir Walter Buller could not be considered a party to the case. Sir Robert Stout's application for an adjournment was granted in order to ascertain Kemp's successors.

The case was adjourned for six weeks from date.

Case adjourned till the 30th May.

The Court adjourned till the 30th May.

MINUTES OF PROCEEDINGS IN THE NATIVE APPELLATE COURT UNDER THE PROVISIONS O "THE HOROWHENUA BLOCK ACT, 1896."

[In continuation of G.–2A.]

SYDNEY STREET SCHOOLROOM, WELLINGTON, 25TH APRIL, 1898.

THE Court opened at 10 a.m.

Present: A. Mackay, Esq., Judge (presiding), and W. J. Butler, Esq., Judge.

Sir Robert Stout appeared for Hetariki Matao and Maata Huikirangi, who claim to have their names included in the list of owners of the block; Mr. Stafford for Wirihana Tarewa and Rihipeti Tamaki; and Mr. H. D. Bell (by leave) for Sir Walter Buller.

Sir Robert Stout moved to have the declaration of beneficial ownership in favour of Keepa te Rangihiwinui, delivered on the 14th instant, amended so as to show on its face that it was interlocutory in its nature.

In the course of discussion,

Judge Mackay said there was no order at all; what had been made was simply a declaration. The word "order" was specially excluded.

Mr. Bell said his position there was that he claimed that the Court, which had made its final decision in its jurisdiction under the Horowhenua Block Act in regard to Subdivision 14, should issue its order. With all respect he denied the right of this Court, or of any Court, having pronounced judgment, to say it would defer the order consequent on its judgment.

Judge Mackay said the Court could make an interlocutory order at any stage of the proceedings.

Mr. Bell said the Court, sitting under the Horowhenua Block Act, had delivered its judgment. That being so, he claimed that there should be an order under the seal of the Court on the judgment. He was trying, in respectful language, to state what he conceived to be the right of every litigant. He admitted the right of the Court to defer its judgment until it had agreed upon it; but, as judgment had been delivered, he asserted the right of the successful litigant to have it expressed by an order under the seal of the Court. He now claimed from the Court a sealed order expressing the judgment which it had delivered.

Sir Robert Stout submitted that the terms used in the order must be such as would carry out the intention of the Court. He denied the right of Sir Walter Buller to have a new motion made without notice.

Mr. Bell said he was there as the representative of a successful litigant.

Sir Robert Stout said that Mr. Bell was appearing for a person who was not a litigant at all—who was not before the Horowhenua Court when this question was investigated.

Judge Mackay said the Court must under the circumstances refuse Mr. Bell's application. Mr. Bell said that in justice to the successful side he was entitled to claim a vesting order. Now, there were other parties whose interests the Court had to protect at the present juncture, independent of the interest of Mr. Bell's client. There was a case pending in the Court which the Court did not wish to prevent being heard. If the parties themselves withdrew, that would be another matter. That was the reason why the Court was extremely careful in making its written declaration of its decision. The Court was fully justified in putting the declaration in such a form that it could not possibly be misconstrued. To grant Mr. Bell's application would be to defeat the whole intention of the Court. If the Court had considered it should make a vesting order it would have made it at the time of the delivery of judgment. If the order desired by Mr. Bell were made, his client would have been able to get a Land Transfer certificate, which would have ousted the jurisdiction of the Court.

Mr. Bell mentioned that he was moving by way of *mandamus*.

Judge Mackay: You cannot get a *mandamus* against this Court requiring it to do something which it never intended to do.

Mr. Bell said that a *mandamus* had issued against the District Land Registrar.

Judge Mackay: I am perfectly confident you will not get a *mandamus* against this Court.

The Court decided, with a view to place the matter beyond doubt as to the nature and effect of the instrument issued by it on the 14th instant, inasmuch as the District Land Registrar appeared to have misconceived the intention thereof, to amend the said instrument by adding the following words after the word "owner" in the last paragraph, namely: "Provided, and it is hereby expressly declared, that the foregoing declaration is in the nature of an interlocutory decision, and is not intended as a vesting order under section 5 of 'The Horowhenua Block Act, 1896'"; and it is hereby directed that the aforesaid words shall be so added, and shall be read and construed as part of the aforesaid instrument as if such words had been written therein in the first instance.

The Court adjourned till the 2nd May.

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