

should have said, "I am not going to sign these documents because you have circulated these reports again." That fact is set out in a statement of claim in the action now that is in England. I put it in.

60. You did not pay the mortgage because you said the damaging report had prevented you making financial arrangements?—That is so.

61. Had the damaging report not been circulated you could not have complained about Flower's executors selling you up if you had not been able to pay the mortgage?—They were within their rights if they had not circulated that report.

62. Do you say that, because they circulated the damaging reports, the whole of the compact entered into in 1904 was null and void?—The Court would make it null and void.

63. And, therefore, you are entitled to redemption of the mortgage?—That is so.

64. You commenced an action in England for redemption of mortgage?—Yes, in the Chancery Court.

65. You have put in the statement of defence in that action, but have you got a statement of claim?—The statement of claim was put in after I left England.

66. You put in a statement of defence?—That is their defence.

67. Have you got a copy of the claim that was put in for you?—No.

68. Now, the whole ground of that action was the circulation of this damaging report by Flower's executors, and yet—here is another hurdle—it seems clear to me that your statement of claim says nothing about the damaging report?—That was threshed out before Lord Justice Parker. He did not know exactly what they had done, but they put these documents I have signed before Lord Justice Parker that I would not interfere with the registration nor ask for a further extension of time. Lord Justice Parker said, "I admit these documents, but that is a good reason why he should have his action. If this is the man who has had all this litigation you may find that he will show some reason for ignoring what he has signed."

69. If you start to upset or try to go behind a document you have signed you always set out in the pleadings the ground on which you proceed?—But you do not produce your evidence to the Court. Lord Justice Parker said I would no doubt produce evidence at the trial, and he went on.

70. The whole meaning of pleadings is to explain to the Court the matters on which you will bring up your evidence?—What you mean to say is that Mr. Bell knew better than Lord Justice Parker when making the order. He made the order in what you say was the absence of that claim. If he made it without evidence so much the stronger was the case.

71. I want to know on what ground he made it, and I cannot see from the pleadings how he came to make it?—The defence was on several grounds. One ground he was very particular about. He said, "Who holds this property now?" Counsel: "The executors." The Judge: "How do they hold it?" Counsel: "They bought it in on the 10th August at New Plymouth, New Zealand." "Were not the executors the trustees for this man?" he asked. Counsel: "Yes." Counsel then went on to say, "Well, undoubtedly, when the compact was broken they fell back into their old position. That is what we intend to prove in the trial of the action."

72. After seeing the statement of claim it is not certain there was anything said about this; but from the statement of defence, which is the only document put in, it certainly says it was relied upon by your counsel, and that is the hurdle—it was not in the pleadings?—I do not think it was in the pleadings. I have not the statement of claim. My solicitor put it in, and I left it to him; but he had this evidence in his hands.

73. You are quite clear about that, that your solicitor had this evidence in his hands?—I fancy there is something said about it in the document written by Mr. Jenkins that I put in.

74. You say that Lord Justice Parker expressed a doubt as to whether he had jurisdiction?—Absolutely.

75. And on the advice of your counsel and on the advice of Sir John Lawson Walton?—Sir John Lawson Walton was Attorney-General and could not act for me.

76. It was believed that you should be defeated on the question of jurisdiction, and therefore you decided not to proceed with your action?—That is exactly the position; but Sir John Lawson Walton was not satisfied, but went and consulted other Judges. As far as jurisdiction goes, Sir Edmund Buckley confirms it in Mr. Jenkins's letter.

77. I remember that letter now. It is not exactly what you are asking, but I will read Mr. Jenkins's letter. [See exhibit.] So your solicitor knew at the time that the compact had been broken in that way, whether it was pleaded or not, and intended to rely on it before Lord Justice Parker?—Yes; if the trial had gone on we would have produced the evidence to show that. His Lordship said, "There is no doubt he has some evidence." That is the ground for his refusing the action.

78. As the result of the advice you received you decided to come out to New Zealand and start an action for redemption—just the same sort of action that you had started at Home?—Yes, but we did not start it.

79. You did not start it at once, but you came out with that intention, and in order to safeguard your rights you caveated the title?—That is so. A man named Kelly, one of the sub-tenants, had borrowed some money off another man, and I was served with a writ to show cause why I should not remove the caveat.

80. As a result of lodging the caveat the people registered as proprietors commenced proceedings against you to show cause why the caveat should not be removed?—That is so.

81. And that matter was heard before Mr. Justice Edwards?—Yes, in New Plymouth, and he referred it to the Full Court. It came before Mr. Justice Edwards, and he said, "I will reserve it for the Full Court"?—Yes, not the Court of Appeal.