

of the said sum of £25,271, with interest as therein mentioned. The said mortgage was bogus; no consideration passed in respect of the same, and the said Thomas George Macarthy acted in the said transaction with actual notice and knowledge of all the plaintiff's rights and beneficial and (or) equitable interests in the said property by the procurement of the defendants or one of them and (or) their attorney and (or) agents.

10. In the years 1909 and 1910 the defendant Herrman Lewis retained and employed Messrs. Findlay and Dalziel as and in the capacity of solicitors, and by an instrument of mortgage dated the 7th February, 1910, the defendant Herrman Lewis purported, in consideration of £1,000 then alleged to be owing to the said firm of Findlay and Dalziel, to mortgage to that firm all his interests in a portion of the said lands by way of mortgage to secure to the said Findlay and Dalziel the repayment of the said sum of £1,000 upon demand, with interest as therein mentioned. No consideration passed to the said Herrman Lewis upon the execution of the said mortgage, and no sum of £1,000 was then or at any time due to the firm of Findlay and Dalziel from the defendant Herrman Lewis, and the said mortgage was executed and taken by the parties thereto with actual notice of the plaintiff's rights and beneficial and (or) equitable interest in the property thereby mortgaged.

11. The transfer and mortgages in the last three preceding paragraphs mentioned have since the 1st January, 1911, been released to the defendant Herrman Lewis, and they were only created and (or) executed by the defendant Herrman Lewis to the end and intent that their existence should operate to the prejudice of the plaintiff; and, further, the unjust and unconscionable scheme of the defendants, or some or one of them, and (or) their attorney and (or) agents, in defeating the rights and beneficial and (or) equitable interests of the plaintiff of and in the said Mokau Estate.

12. By reason of the acts and conduct of the defendants as herein set forth the value of the plaintiff's title and interest in the Mokau Estate has been so diminished that the plaintiff will never be able to obtain on a sale thereof the true value or anything like the true value thereof, and the plaintiff has since the 27th July, 1906, been and still is deprived of his enjoyment in and right of possession of the said property, and of the rents and profits derivable therefrom. The defendants other than the defendant Herrman Lewis have since the said 27th July, 1906, wrongfully continued and confirmed in the possession of parts of the said estate divers persons who have occupied the same without payment of rent and (or) any adequate and sufficient rent.

The plaintiff prays judgment,—

- (1.) That an account be taken of what is due to the defendants other than the defendant Herrman Lewis, being the executors of the late Wickham Flower, for principal and interest and costs;
- (2.) An account of the rents and profits of the properties comprised in the mortgage received by the same defendants, or by any other person or persons by their order or for their use, or which without their wilful default might have been so received;
- (3.) An inquiry (a) whether the defendants other than the defendant Herrman Lewis have allowed the mortgage property and (or) its title to become deteriorated in value to any and what amount; (b) whether since the 27th July, 1907, any loss has been occasioned to the mortgaged premises by any rash and (or) improper and (or) imprudent dealings on the part of the said defendants with the same property; and (c) whether the same defendants have since the 27th July, 1906, confirmed in the possession and (or) occupation of the mortgaged premises or any part thereof any persons who have been wrongfully in possession thereof or otherwise occupied the same without payment of rent or any adequate rent, and what, if any, occupation rent is properly chargeable against the said defendants in respect thereof; and
- (4.) That upon the plaintiff paying to the defendants other than the said Herrman Lewis and (or) the defendant Lewis what shall be found to be due for principal, interest, and costs under the said mortgages of the 27th July, 1906, and the 1st November, 1906, after deduction of what, if anything, shall be chargeable against the defendants the executors of the late Wickham Flower (deceased) under the lastly-mentioned accounts and inquiries, all the defendants be decreed to reconvey and (or) assign and (or) retransfer the mortgaged premises free and clear of all encumbrances done by them or any person claiming by, from, or under them, or any one of them, and deliver up to the plaintiff all the muniments of title, and in default £100,000 damages.
- (5.) Such further and other relief as the nature of the case may require.

Filed and delivered by Edwin George Jellicoe, of 219 Lambton Quay, Wellington, plaintiff's solicitor.

EXHIBIT PPP.

NOTE.

18th October, 1912.

THE Stout-Palmer Commission made the same error as did Chief Judge Macdonald in 1887—namely, that of holding this property to be amenable to the general laws, instead of confining the questions relating to the title to the special statutes enacted respecting the property. In the case of Chief Judge Macdonald, the then Attorney-General, Sir F. Whitaker, made it clear (*Hansard*, 1888, pp. 528–29) that where an Act of Parliament dealt with a particular case it could not be affected by the general laws. In the case of the Stout-Palmer Commission complete ignor-