

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:—