The Chief Justice: You do not say there is any lot which would be affected except the block mentioned in the Act?

Mr. Bell: My friend Mr. Baldwin said another lot ought to have been affected.

The Chief Justice: I understand if any of the 1,200 acres was to be made up it must be made up somewhere else.

Mr. Bell: Supposing the Court finds that Block 11 trenches on to the piece of land awarded to Ngatiraukawa out of the middle of Block 11, supposing they found that Ngatiraukawa's 1,200 acres was not made up, and that No. 11 has got a piece of Ngatiraukawa somewhere: is it intended to transfer that? Is it area or location? It is submitted that it is area, as defined by the order. I wish to add that I ask the Court, on this question, to say where is the intended trust within the meaning of the Equitable Owners Act on this set of questions. How does this constitute an intended trust out of the existing and defined Block 14? Just adding one word with regard to question 10, which I have taken collectively with the others: Supposing an advertisement had been issued under the Act of 1880, sections 27 to 32, but had not been sufficient, then that would have been a block again which would have constituted an intended trust within the meaning of the Equitable Owners Act. And supposing the map had not remained the required time in the place where it was deposited, that, again, would have operated to create an intended trust of this defined area. You cannot take the omissions. The things must be done fully or not at all; and, if a technical omission which renders the act of the Court inefficient entitles the Court to declare a trust by reason of a defect in the Courts carrying out the duties imposed by the statute, that might be properly remedied in another way. But is it a trust? Then, with regard to question 11: that is entirely what I have been arguing, and I do not wish to add anything to it. Now, as to question 12, we ask that the collective answer to that shall be "No." It is a collection of circumstances asking the Court whether the absence of these men does not nullify the orders *ab initio*, and leave the certificate of title issued under the 17th section in full force—at all events, with regard to those particular sections. Does the mere fact that these matters have happened, if discovered by the Appellate Court, create a trust? Whatever its answer may be on *certiorari*, we submit they do not, if discovered by the Appellate Court in this procedure, nullify the orders *ab initio*, and leave the land under the 17th section. Let us examine the questions for a moment. They are all questions going to the 52,000 acres. Every one of these blocks is open to investigation under the Equitable Owners Act, proceeding under section 14 of the Act of 1894. I do not say there may not be questions affecting the Court on partition. The Court is asked to say whether the Appellate Court, proceeding under the Equitable Owners Act, must, in its jurisdiction, regard these orders as void *ab initio* because a Supreme Court might on *certiorari* have so found. With regard to that, there is a question of the lapse of time, there is a question of acquired interests, and there is the question of how the boundaries may have been acted upon by parties intervening. It does not follow, because the Court has acted without jurisdiction on a certain particular, that therefore it necessarily voids the proceedings. You cannot take an abstract question of this kind and say, without regard to the circumstances and the special jurisdiction in which the Court is sitting, and the special matters relegated by the Legislature, that therefore that Court is entitled to treat the orders as void. And so, we submit, they are not void for the purpose of the inquiry relegated to the Appellate Court. Nor is it bound, or indeed entitled, to treat them as such. With regard to question 13, I have dealt with that practically in opening my argument upon these questions. It sums up the position which the Appellate Court intends to take. If the Supreme Court advises the Appellate Court that by reason of the matters herein alleged Kemp is in law a trustee, then that will obviate the necessity of the Native Land Court determining the question, which they say is not relevant to to this case—namely, whether Kemp was in fact a trustee. The fact they leave on one side altogether, and they ask the Court whether, under the circumstances stated, Kemp is not a trustee, without any inquiry into the question whether the section was allotted to him alone or not. Supposing, for instance, it had been proved that a voluntary arrangement had been signed—this is the question the Court puts—by every one of the registered owners, and supposing the Court refused to act upon that, did it judicially inquire and determine that Kemp was entitled to Block 14 as beneficial owner? Still, the Appellate Court says, inasmuch as the muniment of title is not cancelled, is not Kemp therefore a trustee under section 17? Still, on these two first assumptions, even assuming that a voluntary arrangement was come to, and assuming that the Judge had proceeded with due deliberation and form of law, with the assent of everybody, and determined Kemp to be duly entitled, is the fact that the plan was not deposited in accordance with the provisions of the Act of 1880 sufficient to constitute Kemp a trustee under the Equitable Owners Act by reason of an assumption of law that he was a trustee under the 17th section, and therefore clothed with what they call a fiduciary capacity? It is these words which mislead the Court. They seem to think the fiduciary capacity of a person who is one of the registered owners is the same fiduciary capacity as is contemplated by the Equitable Owners Act. It is very questionable, unless it has been decided by authority—and I do not think it has been so decided—it is very questionable whether these people who are registered owners are anything else than recipients of rent, and in that sense trustees. What do they hold? They are persons entitled to lease, and, if they receive the rents, are liable to render accounts; but they are not trustees any more than if the Registrar of this Court was directed to execute a lease, and, if this Court was receiving the rents, the Registrar would be a trustee in no other sense whatever. He never would have been constituted by the Court by any intention trustee except that as defined by the 17th section. You find there was a flaw in the constitution of his Crown grant, and you relegate him not to the fiduciary capacity or trusteeship you have alleged against him, but you pass to another capacity—a limited and confined fiduciary capacity—and you say, "Very well, now we will pass by all questions of how this man became absolutely entitled," because you find another set of conditions behind by a mere chance,