

of such alienation: Provided that no certificate of title as last mentioned shall be issued except pursuant to final judgment in the proceedings hereinafter directed to be instituted by the Public Trustee."

Then, section 10 is inserted for the purpose of testing the validity of the alienation, and the Public Trustee is directed to commence an action in the Supreme Court. That was done. Section 15 is the next important section. It reads:—

"For the purpose of carrying out the provisions of this Act, the Court shall have and may exercise, as the nature of the case requires, in addition to the special powers hereby conferred, all the powers and jurisdiction of the Court under 'The Native Land Court Act, 1894,' and 'The Native Land Laws Amendment Act, 1895.'"

I ask your Honours' attention to the opening words of the section—"For the purpose of carrying out the provisions of this Act." Now, your Honours, our submission is this: that "The Horowhenua Block Act, 1896," provides—(1) A re-enactment of the Equitable Owners Act; (2) power to the Appellate Court to exercise the jurisdiction conferred on the Native Land Court by the Equitable Owners Act; (3) gives to the Appellate Court, for the purpose of exercising that jurisdiction, its ordinary powers when it sits as in its ordinary jurisdiction, but only for the purpose of carrying out the provisions of this Act. The Appellate Court has assumed an original jurisdiction in respect to this block, and insists upon it. I may just say that a further power is given by this statute, which is not material to the present case.

*The Chief Justice*: You have not stated what your general object is—to establish what point.

*Mr. Bell*: I said I was dealing with section 15.

*The Chief Justice*: But what is the point you want to establish with regard to the construction of those sections?

*Mr. Bell*: This, your Honour—I must turn to the Equitable Owners Act before I can make my point clear: the point is that the Native Appellate Court had no jurisdiction to inquire into anything further than whether there was an intended trust with regard to a specified area.

*The Chief Justice*: Is not that stated?

*Mr. Bell*: No; they assert the right of the Appellate Court to go into and inquire into the whole proceedings of the Court of 1886. There are a number of questions which Sir Robert Stout, when acting with me, called "conundrums."

*The Chief Justice*: But do they not say that they are able to go into these matters for the purpose of establishing an existing trust?

*Mr. Bell*: That is exactly what they will not do. That is the attitude we have taken up throughout. We insist on an answer to question 15 [read]. We claim the answer "No" to that, and it is upon that that the whole point turns whether this Court will or will not require to answer a number of the questions.

*Mr. Justice Denniston*: There was a question as to the original boundary of this block?

*Mr. Bell*: Yes, your Honour. They say that is not the piece of land, but that there is another piece of land.

*The Chief Justice*: Is this the point: that the Appellate Court say, for the purpose of determining the question of a trust, the Native Land Court has not gone into the question as to whether any part of this Block 14 should have been located in the 11,000-acre block?

*Mr. Bell*: Yes, that is one of the blocks. The point, briefly stated, is this: "The Native Equitable Owners Act, 1886," provides that, upon the application of any Native claiming to be beneficially interested in any land as aforesaid, the Native Land Court of New Zealand may make inquiry into the title of such land, and in the existence of any trust affecting the title thereto. Our point is that the Native Appellate Court is limited to the ascertaining of an intended trust. The Appellate Court, under the Horowhenua Block Act, has only the jurisdiction conferred upon it by the Equitable Owners Act for this purpose, and that jurisdiction is only to inquire into whether there was an intended trust in respect to the block described in a particular instrument of title. I do not know, your Honours, if I have made the point clear.

*Mr. Justice Denniston*: You say that only an intended trust can be dealt with?

*Mr. Bell*: Yes, your Honour; it says so.

*Mr. Justice Denniston*: Section 3 of the Act goes on to say, "According to the result of such inquiry, the Court may declare that no such trust exists, or if it finds that any such trust does or was intended to exist, then it may declare who are the persons beneficially entitled."

*Mr. Bell*: It may inquire whether a trust does exist, of course, if there is no trust existing on the face of the instrument; but it has only jurisdiction to inquire into the existence of any intended trust.

*Mr. Justice Denniston*: I thought section 3 rather suggested that if there was a trust created, or an intended trust—a trust which was not declared—

*Mr. Bell*: Two things are provided by section 2. The nature of the title may be such that a trust does exist, or it may be proved as a fact that there was an intended trust in respect of it.

*The Chief Justice*: It might be that there was a trust sufficiently declared, or it might be that there was a trust insufficiently or indefinitely declared.

*Mr. Bell*: But consider what it would mean, supposing the Court were to proceed on the assumption that the Horowhenua Block Act declares that the Appellate Court shall have all the jurisdiction of the Act of 1894, and the Court were to determine that an accident of procedure is sufficient to clothe persons, without intention, with beneficial ownership: what is the obvious and necessary result of such a decision as that? We ask the Court to construe the Equitable Owners Act. We ask it not to consider accidental matters. That is what, we submit, is the meaning of the Equitable Owners Act; and we submit that the interpretation which our friends are driven to put on the Equitable Owners Act would be a dangerous one. The Appellate Court say that under section 15 of the Horowhenua Block Act they have original jurisdiction to inquire into what ought to have been done, and to themselves determine not a question founded on the pro-