

title granted in due form by a competent Court, to go behind such title and investigate and pronounce on the validity of that title, or upon the proceedings or jurisdiction of the Court which purported to grant it? If so, then one is surprised that during the currency of the Act it should have been thought at any time necessary to apply to this Court, as to lands within the Act, for *certiorari* or other proceedings to test the validity of any title or proceeding. The contentions made in the present case, and entertained by the Court—at least, so far as to submit them for the opinion of this Court—show how far the construction now contended for may be pushed. It is suggested that it is open to the Court to examine into the constitution of the Native Land Court which made the subdivision of 1886, to ascertain whether it complied with certain preliminary formalities as to cancellation of certificates, and generally to ascertain whether it had jurisdiction to make the order of subdivision. It is, I think, a much more reasonable construction of the statute to say that it was intended to be confined in the first instance to ascertaining the nature of the title to the property in which the applicant claimed to be beneficially interested—that is, to finding out who had, at the time of the investigation, been declared the owners of the land under the proceedings of a competent tribunal, and that it was not competent for the Court to challenge the procedure of such tribunal, and, in effect, set aside an existing title. Having ascertained this, it has then to determine whether, at the time such title was granted, the person or persons who, on its face, are absolute owners were really intended to hold the land in trust for other persons. This, I have always understood, is the construction which has been put upon the statute.

JUDGMENT OF HIS HONOUR MR. JUSTICE CONOLLY.

The judgment which I am about to read is that of Mr. Justice Denniston. I have not thought it necessary to prepare a separate judgment, since I concur in his judgment, and also in that of the Chief Justice; and we are all agreed upon the answers to be given to the questions submitted by the Native Appellate Court.

ANSWERS TO QUESTIONS SET OUT IN CASE STATED BY THE NATIVE APPELLATE COURT UNDER SECTION 92 OF "THE NATIVE LAND COURT ACT, 1894," FOR THE OPINION OF THE SUPREME COURT.

The Court answers the questions as follows:—

To the 1st: That it is not material to the present case whether the 56th section of the Act referred to does so require, or whether it was or was not imperative that the requirements referred to should have been complied with.

To the 2nd: We answer that the land may be deemed to have effectively vested in Kemp as beneficial owner, notwithstanding the matters mentioned in this question, if the Appellate Court is satisfied of the intent of the Native Land Court in making the order.

To the 3rd and 4th: It is answered that the questions are on immaterial matter.

To 4A: We answer that the competence of the Court on the occasion referred to is not a matter for inquiry.

The matters upon which the 5th and 6th questions are put were not argued.

To the 5th, 6th, 7th, 8th, 9th, and 10th: We answer that the matters upon which the questions are put are not subjects for inquiry.

To the 11th: The answer to this question is that the land is not subject to the trust on the ground mentioned.

To the 12th: We answer that, as the matters referred to in this question are not subjects for inquiry, no other answer is necessary.

To the 13th: The answer to this question is in the negative. The subject for inquiry is not whether the Native Land Court, in creating Division 14, conducted the proceedings with due attention to the law prescribing the preliminaries to or regulating the proceedings in the subdivision.

To the 14th: The answer to this is that, though Judge Wilson's evidence ought not to be disregarded, but, on the contrary, ought to be accepted as of great weight, it is not to be treated as conclusive, but weighed with other evidence.

To 14A: The answer to this is in the affirmative.

To the 15th: The answer to this is in the negative. With regard to the exception made in the question, we answer the question apparently involved in that exception: that the orders are to be taken as valid, but not as conclusive that the person named in the order was absolute or sole beneficial owner.

To the 16th: The answer to this question is that the subject for decision is not whether it was validly agreed, but whether the Native Land Court proceeded upon a determination that it had been so agreed.

To the 17th: The answer to this is in the negative.

To the 18th: The answer to the first part of this question is in the negative, and to the last part in the affirmative.

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