

1898.
NEW ZEALAND.

THE HOROWHENUA BLOCK.

MINUTES OF PROCEEDINGS IN THE SUPREME COURT, AND JUDGMENTS ON THE SPECIAL CASE
STATED BY THE NATIVE APPELLATE COURT (*Vide* G.-2, Sess. II., 1897, pp. 136-140).

[Transcript of Mr. Le Grove's shorthand notes.]

Presented to both Houses of the General Assembly by Command of His Excellency.

WEDNESDAY 3RD NOVEMBER, 1897.

BEFORE his Honour the Chief Justice, Mr. Justice Williams, Mr. Justice Denniston, and Mr. Justice Conolly.

Mr. H. D. Bell, with Mr. A. P. Buller, appeared for Major Kemp; Sir Robert Stout, with Mr. Stafford, appeared for Wirihana, one of the *cestuis que trustent* mentioned in the Act; and Mr. Baldwin for Rihipeti Nireaha, Himiona Kowhai, and Pire Tikara three of the registered owners. The Court decided that Mr. Bell should open the case on behalf of Major Kemp.

Mr. H. D. Bell: May it please your Honours,—The Native Appellate Court, sitting not in their ordinary jurisdiction, but with special jurisdiction, as we submit, has submitted a case for the opinion of this Court, under the authority conferred upon it by the Act of 1894. In order to show how far the subject-matter submitted to the Court for its opinion is material, I submit it is necessary to turn to “The Horowhenua Block Act, 1896,” and “The Native Equitable Owners Act, 1886,” before the consideration of all the questions, and for this reason: If your Honours will look at question 15, you will see it says,—

“Has the Native Appellate Court, exercising jurisdiction under ‘The Horowhenua Block Act, 1896,’ jurisdiction to inquire into the validity or otherwise of the proceedings taken by the Native Land Court in 1886 in respect of the making and issue of the orders in freehold tenure, except so far as may be necessary to ascertain whether the Native in whose favour an order was made was or was not a trustee?”

The first question, therefore, is whether a number of these questions are relevant. The Native Land Court puts that question in so many words to the Supreme Court. “The Horowhenua Block Act, 1896” (No. 18 of the local Acts), begins by a recital of “The Horowhenua Block Act, 1895.” [Counsel here read the first four sections of “The Horowhenua Block Act, 1896.”] If your Honours will look at the First Schedule, paragraph No. 5, you will see that Division 14 contains 1,196 acres. The point is this: that the Native Land Court have gone into the boundary question. What we say is that the Act contemplates inquiry into an existing area as defined for the purpose of ascertaining whether there are any *cestuis que trustent* as to that area, and that there is no authority to inquire whether that area was or was not properly ascertained. The reason why I refer to the First Schedule is because section 4 of the Act says, “as the said divisions are more particularly described in the First Schedule hereto”; and then the schedule says, “Division No. 14, containing 1,196 acres, more or less, being the whole of the land comprised in certificate of title, Vol. xlviii., folio 148, of the Register-book of the Wellington District,” the usual way of describing land under the Land Transfer Act, just as if the description had been set out—that is, the area as defined on the existing division; and the question is as to whether there are *cestuis que trustent* as to that division. That is the whole matter as to section 4. Then, section 5 says,—

“Any order made in pursuance of proceedings under this Act declaring the persons beneficially entitled to the said Divisions Six, Eleven (in part), and Fourteen, or any of them, shall have the effect of vesting such land in the persons so declared respectively to be entitled for an estate of freehold in fee-simple as tenants in common in such relative shares or interests as are specified in, and as from the date of making any such order, anything in the Act now in force to the contrary notwithstanding; and such persons, and the successors of such of them as are deceased, shall, on the production of such order to the Registrar, be entitled to be registered as proprietors, and to have issued to them a Land Transfer certificate in respect of the land comprised therein; and any existing Land Transfer certificate, and all registrations of dealings thereon in respect of any such land, shall, subject to reregistration of dealings found not to be invalid as hereinafter provided, be deemed to be null and void as from the date of the passing of this Act.”

Sections 6, 7, and 8 are not material, except subsection (f) of section 8:—

“A certificate of title for any portion of Division Fourteen aforesaid of which any valid alienation in fee-simple had been made as aforesaid, in the name of the person or persons entitled by virtue