

Appellate Court all the jurisdiction of the Supreme Court. If the Supreme Court could find a trust after the certificate was issued, as they did in Warena Hunia and Meiha Keepa, how did the certificate come to be issued? I would refer the Court to the judgment of his Honour the Chief Justice in the Court of Appeal. I do not ask any further powers than that. The whole point turns upon the voluntary arrangement. If Judge Wilson in this case had chosen to say, "I made this order in pursuance of my jurisdiction as an Assessor under the Native Land Court Act," then this voluntary arrangement would have nothing to do with it; but it is admitted in the Supreme Court, and asserted in the Appellate Court, that Judge Wilson proceeded under a voluntary arrangement, and did not come to any decision at all. Now, what is the Native Appellate Court doing? It is not doing so much as the Supreme Court did; and is it to be said that this Court has not the powers of the Supreme Court to say whether there is a resulting trust or not? Supposing it was said that many of these people were dead, and that others who were living were not present, can it be said that this is a voluntary arrangement, in the face of what the Chief Justice said in relation to this matter? If we can show that the owners did not make the conveyance, and did not consent to the voluntary arrangement, is there not a resulting trust to them? It is a question whether the owners of the land had given up their land or not. In the case of Mahuka v. Smith the non-appearance of the parties may not have affected the jurisdiction of the Court; but here the assumption is that it is a voluntary arrangement. I say, then, we have conveyed, and how are we bound? Therefore, that is a question of trust. Even if the Court had not the vast powers conferred upon it by the Act of 1895, they could proceed under the Equitable Owners Act. Now, to take this point about the plans. The Court said the block went up to the railway-line, and the Judge, without the Assessor, chooses to put 600 acres into it.

Mr. Bell: It was the surveyor.

Sir R. Stout: There are 1,200 acres on the side of the railway-line; but what right have they to go into Block 11, which the Supreme Court has declared is a trust block, without the consent of the *cestuis que trustent*? There is an expressed decision by the Court of Appeal on this point—that the Court cannot do this thing that has been done. Your Honours will see what "The Native Land Court Act, 1880," says on this point:—

"27. In cases in which no such plan and description are in possession of the Court, it shall require a survey, if not already made, to be made, and a sufficient plan and description to be deposited in Court.

"28. As soon as the requirements of the next-preceding section are complied with, it shall be the duty of the Court to give notice, in such manner as it may think best adapted to attract the attention of all persons whom it may concern, that the plan is ready for inspection at a place to be named in such notice.

"29. If any person is desirous of making objection to the boundaries as defined by the plan, he shall give notice thereof to the Court, stating the grounds of objection.

"30. On receiving such notice, the Court shall proceed to adjust the boundaries according to the rights of the several parties interested, and for such purpose shall have and may exercise all the powers vested in the Court.

"31. If no objection is made within the time to be fixed by the Court, or if objection is made and not substantiated, the plan as finally settled by the Court shall be signed by one of the Judges and deposited in the Court as a record thereof.

"32. The land delineated by the plan so settled shall be deemed to represent the land in respect of which the order has been made at the original hearing, and, if any amendment has been made in the description, an amended description shall be placed on the records of the Court."

Now, the Court means a Judge with an Assessor. What happened was that this plan was made, and that the boundaries of the blocks were considerably altered—for example, portion was taken out of Block 11. The blocks were considerably altered, and no consent was given except that of the two trustees. They have no power to give up 600 acres of the *cestuis que trustent* land. This is the case of two trustees, one of whom is giving up to the other 600 acres of land. That is what it amounts to. Kemp and Hunia gave up to Kemp 600 acres without consulting the *cestuis que trustent*. I would refer the Court to what Mr. Justice Williams says at page 753, Vol. 9, of "The New Zealand Law Reports." How does the Appellate Court stand? It has produced to it certificates that have been issued without jurisdiction. Is there anything in the statute to make those certificates good? It has the power to quash them, and surely it had a right to ask, when inquiring into the title, whether the Court which issued the certificates had a right to deprive the *cestuis que trustent* of their land. Surely the Court would have the right to say that this Block 11 is a trust block. Kemp himself admitted that. Well, the surveyor, my friend says, has given 500 or 600 acres of this block contrary to the voluntary arrangement come to in the Court. Has not the Appellate Court the right to say that this 500 or 600 acres affirmed to be a trust block should be given up? What power has the surveyor to set it aside and issue the certificate? I submit the Appellate Court has the right to inquire into that, and that under the Equitable Owners Act they would have the right to inquire into the nature of the title. What do they find? That a bogus certificate was issued—a certificate issued without jurisdiction. Therefore, have they not a right to say that the block, as far as this 600 acres is concerned, is a resulting trust? This is sufficient to show that the Native Appellate Court would be bound to find that this land was a trust, because the Court had originally found it to be so. Now I come to the next point: When was this certificate or this order first made? They have a right to ask that, surely. All these facts were gone into by the Supreme Court when it inquired whether there was a trust or not; and what have they asked about this? What happened on the 25th November, and on the 2nd and 3rd December? Here comes in this question of what happened with the Judge. My friend has shown, with regard to a Judge's recollection, what is the rule of practice, and says it is not a rule of evidence at all, and it is provided for in England as the rule of England. It is Order 59, Rule 8, if I remember rightly. It is only a rule of practice, and has nothing to do