The point was that this land did not become Crown land until the issue of the certificates. The actual decision in that case was that, if the Crown grants were issued, they validated the leases issued prior to the issue of the Crown grants, but the issue of the Crown grant was what validated them. Until the Crown grants were issued they had no effect at all. Turning to the Horowhenua Block Act, even if we are confined to the narrow construction my friend Mr. Bell puts upon it—that the jurisdiction of the Appellate Court goes no further than the Equitable Owners Act—the Appellate Court, sitting under the Horowhenua Block Act, is entitled to find whether or not a trust exists in connection with this land—not only, as my friend puts it, whether a trust was intended to exist under the order of 1886.

The Chief Justice: You say that the Court has to ascertain whether a trust existed under the order of 1886?

Mr. Baldwin: Mr. Bell's contention is that the Court can only find a trust in the order issued in 1886 by the Native Land Court. I submit that the Appellate Court can go further than that, and can find that Kemp was a trustee on the whole construction of the circumstances, and, if necessary, adopting the position that it is not bound by that order of 1886.

Mr. Justice Conolly: You say that up to 1886 there was a trust, and it is for the other side to show that the trust is divested?

Mr. Baldwin: That is so; and, further, I say, if by any process we can show that this order was granted by the Court without jurisdiction, or was a nullity, and it is also shown that the Natives never intended Kemp to be a beneficial owner, then the Appellate Court is entitled to disregard that order, and find that Kemp is still a trustee under the Equitable Owners Act. Dealing with the preamble in this Act, right away through it draws a distinction between trusts which were intended to exist and trusts which from any reason at all did exist. Your Honours will see that it says,—

"Whereas under 'The Native Land Court Act, 1865' "—that is another point showing that the Equitable Owners Act is confined entirely to grants under the Act of 1865—"certificates of title and Crown grants of certain lands were made in favour of one or two Natives nominally as absolute owners: And whereas in many cases such Natives are only entitled and were only intended to be clothed with title as trustees for themselves and other members of their tribe or hapu or otherwise."

That, I submit, is in favour of persons who are appointed by the Court without any intention of trust at all. In one case the titles are issued to them by the Court without any intention at all in the matter—that is, as absolute owners; in the second case they are issued to them nominally as owners, clearly showing in the preamble that the two cases are contemplated.

Mr. Justice Denniston: You mean to separate these two cases?

Mr. Baldwin: Yes, your Honour.

Mr. Justice Denniston: Is that not straining it?

Mr. Baldwin: I do not think so, your Honour. The words are, "and were only intended to be clothed with title as trustees for themselves and other members of their tribe or hapu or otherwise." Then, section 2 says, "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 nature of the title to such land, and into the existence of any intended trust affecting the title thereto." Well, there was only one nature of title. I submit these words are not to be construed into "nature of title" meaning the sub-title. And then, section 3, I submit, is the keystone of the whole.

The Chief Justice: You have to apply this Act to Block 14. You say it does not mean the title under that order?

Mr. Baldwin: It means the general title to this piece of land. You will see later on that this Act is made applicable to a set of circumstances which it would be difficult to show could have arisen under this particular Act.

Mr. Justice Denniston: The preamble merely shows the reason for enacting it. I suggest to you that your contention involves that you could upset the certificate under the Act of 1867.

Mr. Baldwin: They have found that other persons were entitled to the land.

Mr. Justice Denniston: They have found that that title ought not to have been granted.

Mr. Baldwin: I think not, on this ground: the Court having definitely found, and properly found, as we must assume, because, unless we can show the Court that it was improperly found that Kemp was the beneficial owner, we cannot go behind that order. The point I was attempting to make was that under this Act there are two sets of cases contemplated—there is the case of original title under the Act of 1865, and the case of a derivative title under the Act of 1865. I mean that either the Court could inquire into a trust affecting the piece of land not partitioned under the Act of 1865, or it could inquire into a piece of land which had been partitioned under the Act of 1865. In both cases the title would properly be said to have arisen under the Act of 1865. The illustration is this: Supposing under the Act of 1865 application is made by seven persons to the Native Land Court, who state they were the owners, and ask the Court to award them separate pieces of land, and the Court grants a certificate of title to these seven persons as beneficial owners, according to my friend Mr. Bell's contention it could never be inquired into under the Equitable Owners Act whether these seven persons were trustees or not, because the Native Land Court had not intended them to be trustees at the partition. I submit that must show conclusively that his reading is incorrect. If cases on partition are excluded, then, because the Native Land Court has improperly, and by fraud, been led to make a certain order unintentionally vesting the land in certain persons as beneficial owners, my friend says we are estopped on that point, and that the Native Land Court cannot have any jurisdiction to inquire whether these persons were trustees.

Mr. Justice Denniston: Can you point out where it is suggested that this Act of 1867 can be used?

Mr. Baldwin: I think it can be gathered inferentially. The first is the case of *In re* the Paparoa Block, decided in 11, N.Z. Law Reports, at page 523. I submit that the inference is