

*Mr. Bell* : I must interpose to say that Mr. Baldwin is misinterpreting me. It is a declaratory bit of argument which I must protest against.

*Mr. Baldwin* : The suggestion made by Mr. Bell is this: that we are estopped by order of the Court from getting at the real facts.

*The Chief Justice* : The order of the Court vests the title in Kemp.

*Mr. Justice Denniston* : Mr. Bell has a right to limit the special legislation to what that should be. He says, rightly, that all these questions at one time should have been dealt with, and that a special tribunal has been set up; he not only argues but endeavours to prevent it going beyond the purview of the Act.

*Mr. Baldwin* : I was not attempting in any way to contravene that, but I said the effect of Mr. Bell's argument would be to estop the inquiry as to who were the real owners, and limit the inquiry to what was the intention of the Court at the time the order was made.

*The Chief Justice* : I do not think I observed that. Mr. Bell said that the Appellate Court could not ascertain whether there was a voluntary arrangement with regard to Block 14—that Kemp should have it or not.

*Mr. Baldwin* : I took a very careful note of Mr. Bell's argument, and the question was submitted whether the Native Land Court intended to grant a trust; and he is not prepared to deny that if all the Natives intended a trust, and the Judge had no intention—

*The Chief Justice* : He stated there might be a trust. Although the Court had blundered, the Appellate Court could go into that.

*Mr. Baldwin* : He stated that, well knowing that, as appears on the case, the Judge stated he had an intention. I will not labour it any further, but my point is this: whether the Judge's intention could avail when it was an intention brought about by misstatements as to this voluntary arrangement.

*Mr. Bell* : I said I am not prepared to deny that the Natives outside the Court, amongst themselves, agreed to a trust, and the Court might inquire into the circumstances under which that order was made independent of the mere intention of the Court; but I said, if the Court had an intention, and it was not misled, then it was the intention of the Court.

*Mr. Baldwin* : If my friend admits that, if we can show that the Court was misled in making the order it did—if the Appellate Court was misled, in fact—then we are entitled to go behind the order.

*The Chief Justice* : Mr. Bell's contention is that you must not question whether or not there was a voluntary arrangement within the meaning of the Act—that is, whether it was arrived at by the necessary persons. As I understand, it may be said that, supposing the evidence shows that the voluntary arrangement acted upon by the Court was that Kemp was to be a trustee, then that matter can be gone into, although this title appears on its face.

*Mr. Bell* : That is exactly what we mean, your Honour. The question, we say, for the Court is: How did the certificate for Block 14 come to be issued, and was that intended to be a trust or not? and the question is not whether, by reason of some circumstances which affected the intention of the Court with regard to the 52,000 acres, or some question which affected all the blocks together, an abstruse doctrine of law might constitute a legal trusteeship. The question is one of fact with regard to this particular order, and, if the Court intended to make it a trust, or acted upon a voluntary arrangement, the effect of which was that it was a trust, then the Court, under the Equitable Owners Act, is entitled to make the order.

*Mr. Baldwin* : My friend says this: If the evidence in the Appellate Court proves that there was no such voluntary arrangement—

*The Chief Justice* : That is your argument; but Mr. Bell's point is that you cannot go beyond the voluntary arrangement.

*Mr. Baldwin* : Your Honours will see the difficulty of that position. I understand now that if, as a matter of fact, it is proved in the Appellate Court that there was no voluntary arrangement to give this land to Kemp, and that the Court awarded it on the assumption that there was, then the order of the Court will not exclude the Appellate Court from arguing the point.

*Mr. Bell* : That is absolutely and precisely the point I did not intend, as Mr. Baldwin has stated, for it is exactly contrary to what I have argued in this Court.

*Mr. Justice Denniston* : Mr. Bell has started with the assumption that there was a voluntary arrangement. You want to say it was not a voluntary arrangement.

*Mr. Baldwin* : What I meant to say was this: There are two contentions open to us—First, there was no order, because there was no voluntary arrangement as contemplated by the statute, whatever the judgment might be on the subject; and, second, if there was a voluntary arrangement, there was no part of that voluntary arrangement to give the land to Kemp, and if it was given to him, and the Court made the order accordingly, then the order is invalid. That is the argument I am addressing to your Honours. I will put this further point: Supposing there are 143 owners, as there are in this block; ten or twelve of these persons attend the Court, and one of these persons is a person of paramount authority over the others, and induces the others to acquiesce in what he says, and appears in Court (well knowing that the arrangement is his own, acquiesced in by these ten or twelve persons) and informs the Judge that there is a voluntary arrangement among the whole of the owners of the tribe that a certain thing is to be done, and persuades the Judge that there is a voluntary arrangement, when he perfectly well knows that there is no arrangement, and no other acquiescence than that of a few members on his own proposition. On my friend's contention that order was made in accordance with the facts, and the order may be good—

*Mr. Bell* : I submit Mr. Baldwin is not putting the case fairly.

*Mr. Justice Denniston* : The assumption is that Kemp assumed that all the persons were parties to the claims.

*Mr. Baldwin* : Yes, your Honour.