

pose to labour the point, but your Honours will see that it says: "For the purpose of carrying out the provisions of this Act, the Court shall have and may exercise, as the nature of the case requires, in addition to the special powers hereby conferred, all the powers and jurisdiction of the Court under 'The Native Land Court Act, 1894,' and 'The Native Land Laws Amendment Act, 1895.'" Mr. Bell would leave out altogether those words "in addition." I submit that conclusively points to only one thing in the Native Land Laws Amendment Act, and that is the portion quoted by my friend Sir Robert Stout—sections 58 and 59. They are headed "Jurisdiction," and they are the only sections in that Act dealing with the jurisdiction of the Court or its powers. I wish only to say, in conclusion, that there is another case I should have cited this morning with regard to Crown titles vesting only on issue of the Crown grant, and that is the case of *Tully v. Ngatuere* in No. 2, Court of Appeal, page 446.

*The Chief Justice*: We think, Mr. Bell, that, on the whole, without expressing any indication as to whether we feel any doubt or no doubt about this question, you had better go on with your argument as though there had been no interruption, and take the opportunity of replying to what has been said on the other side.

*Mr. Bell*: I should have desired to address your Honours still further upon this matter in my reply. Upon the question as to the meaning of the Horowhenua Block Act and the Native Equitable Owners Act, and as to the arguments addressed by my friends to your Honours upon the construction of that Act, I wish to refer—as I was referring when the Court stopped me—to the fact that section 15 of the Horowhenua Block Act says that it is only "for the purpose of carrying out the provisions of this Act the Court shall have and may exercise, as the nature of the case requires, in addition to the special powers hereby conferred, all the powers and jurisdiction of the Court." My friends have suggested that there is no other special power except the power under the Equitable Owners Act, but there is a special power in section 4 which is intended, it is submitted, to apply:—

"In exercising jurisdiction under this section the Court shall deal with the claims of the forty-eight persons named in the Second Schedule as if their names had been included in the list of persons registered under the provisions of the seventeenth section of 'The Native Lands Act, 1867,' as specified in Schedule Six hereto, as the owners of the said block, and may also limit the interest of, or wholly omit from any order made under the provisions of this Act the name of, any person who, having been found to be a trustee, has, to the prejudice of the interests of the other owners, or any of them, assumed the position of an absolute owner in respect to any former sale or disposition of any portion or portions of the said block."

That is to say, they may strike any one out of Block 11 whom they find to have acted to the detriment of Block 14, or *vice versa*. That is the special power.

*The Chief Justice*: That is, in addition?

*Mr. Bell*: Yes; but, still, only "for the purpose of carrying out the provisions of this Act." My friends have ignored those words, I submit. They say that the words "in addition" practically abrogate the words "for the purpose of carrying out the provisions of this Act." My friends put it to the Court that I made the omission, whereas I submit they themselves make the omission. To interpret clause 15 as more than supplementing the Equitable Owners Act is to say that a Court sitting under that Act is to have a roving commission to root up the whole procedure of the original Court of investigation, for the purpose—not of ascertaining whether it was intended or not intended to be a trust, but for the purpose of ascertaining whether by some blunder of the Court the proceedings were irregular or informal—for the purpose of treating the original investigations as nullities, as my friends would put it, and therefore of leaving the whole matter at large. I am going outside the Horowhenua Block Act altogether. What we ask the Court to decide is the meaning of the Native Equitable Owners Act. The Act of 1886 gave power to the Court only: "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 of such land, and into the existence of any intended trust affecting the title thereto"; and we submit to your Honours that the question put from the Bench to my friends can only be answered in one way. If what they contend for is the jurisdiction of the Native Land Court sitting under the Equitable Owners Act, then that Court, under the Act of 1886, was for all purposes a Court of review of the procedure of every block in the Native Land Act. That is what their argument leads to. The case was put to my friends by one of your Honours that a person says, "I was beneficially interested in the block. The block came before the Court, and the Court excluded me; but even in giving the land to the tribe which excluded me and refusing the award in favour of the tribe which included me, the Court proceeded to its determination upon a plan which was not in accordance with its award. Therefore, I, the person interested, declare that these people so found that these people were trustees for me, I being a beneficial owner." Then, it may be said that their argument should be limited in its application to cases where, as here, the title began with the investigation under section 17 of the Act of 1867, so that a *quasi*-trusteeship of a kind was created in the inception. But if a block of that kind has been divided—I wish to leave the Horowhenua Block out of the question altogether—into different subdivisions, and a Native comes along and says, "I am beneficially interested in Lot 10," the subdivision having taken place ten years ago, and he goes to the Court and alleges, not an intended trust of 10, but irregularities or informalities on the subdivision which entitled him to show that he was a *cestui que trust* to the persons to whom the certificate originally issued, and therefore leading to a beneficial interest in 10, he proves it by defining it as a beneficial interest in the block which was so subdivided into the ten parts. I venture to submit that that is not the meaning of the Equitable Owners Act. Our point is this, and logic must prove it: that the grievance must be an intended trust in respect of the subdivision, and could not be in respect of the block out of which the subdivision was carved. Every allegation that is made here—every single allegation, with the one exception which we admit is open to the Appellate Court—entitles these people to claim an interest in every other block and every other subdivision; every single point except one—namely, that there was not a sufficient