

or declared on the 3rd December, either by way of confirmation or by way of original creation, in favour of any body of persons, inasmuch as the trust in favour of the descendants of Te Whatanui had been created and declared on the 1st December in regard to Block 9, and no one has suggested that there ever was an express or implied declaration of trust in favour of any one else.

2. It is submitted, therefore, that if the Court finds that the order of the 1st December in respect of Block 9 was final and conclusive, unless it finds that the order of the 3rd December conferred and was intended to confer an absolute ownership on Kemp in No. 14, it must proceed to ascertain and declare a trust which was never intended or declared by any person at the time.

3. The members of the tribe who have an interest against Kemp in this matter come forward in numbers to declare what was the intention of the order of the 3rd December, and practically the only opponent of this is Mr. McDonald; and his statement only amounts to this: that he intended something or other which he did not communicate either to the Judge or to the Natives. That can hardly decide what was the intention of the Court or of the person who was named in the order, or of the people whose land was being dealt with, and who assented to his name going into the order.

Part IV.

1. It is understood that a suggestion is made that the allotment of No. 14 to Kemp on the 3rd December was made in the absence of some of the registered owners, and without their express consent, though none objected; and it may be assumed that this suggestion means that on the 25th November a trust had been created in respect of this block, and that though that trust had become nugatory by reason of the order of the 1st December, yet that it was not competent for the Court to deal with Block 14 without the consent and presence of all the registered owners. But the answer appears to be that the Court was bound to allot Block 14. It was proceeding to partition the whole block, and Block 14 was vacant. To whom was it to be awarded? No new *Gazette* could by any possibility be required. It was part of the division of the whole block, which had been duly gazetted, and was a purely incidental proceeding in the course of the partition. Those who were not present were absent by their own act during the progress of a partition of the Horowhenua Block, in the progress of which it became necessary to deal with a point which arose in respect of Block 14. If this contention means anything, it appears to me that it means that Block 14 must still remain held upon trust for the descendants of Te Whatanui, which is manifestly absurd. Still, assuming that the order of the 25th November related to Block 14, it is manifest that on the cancellation of the trust Block 14 became again tribal land, which it was the duty of the Court under its original *Gazette* to proceed to allocate. Exactly the same objection could be raised to the allotment of any other subdivision of the tribal land to any Native in the absence of any of the tribe. This objection is practically an objection to the whole partition on the ground that all were not present, and, I submit, is indistinguishable from that objection, and that I proceed in the next Part to contend is not open to the Court in its present proceeding.

Part V.

This is part of the case which I perhaps do not understand very well. I mean, only as to what points have been raised. Probably it is the part of the case upon which, if I am competent at all, I am more competent to speak than upon any other, because of the experience I have had, fortunately or unfortunately, of discussing these questions of jurisdiction of the Native Land Court in other Courts.

I myself am unable to understand how it can be suggested that this Court, sitting under "The Horowhenua Block Act, 1896," has jurisdiction to inquire into the validity or invalidity of the proceedings of the Court of 1886, or into the validity or invalidity of the orders of partition issued by the Court of 1886. The very fact that the jurisdiction is limited to three divisions affirms, ratifies, and confirms the partition of which these divisions form part. Who has conferred upon this Court jurisdiction to inquire whether Judge Wilson proceeded regularly or irregularly in 1886? I do not find it in the Act, and, if not in the Act, where has this Appellate Court got any jurisdiction? Here is a Court—no doubt a Court of very complete jurisdiction, but a Court with no original jurisdiction to deal with applications for investigation of title, except such as it derives from its possession of the general jurisdiction of the Native Land Court—here is a Court of limited jurisdiction, sitting in a special jurisdiction for a particular purpose defined by the statute, and then that Court is to proceed to deal with questions which have never been submitted to it by the Legislature. Of course, if I am right in that, a good deal of what I shall have to say following upon the subsidiary questions as to the irregularity will fall to the ground; and I confess that I have not been particular or precise upon this class of objection, as I confess I cannot conceive it possible either that this Court will assume jurisdiction to inquire into such matters or that they will state it as a question of law which can be answered in any but one way. It is human to err; but I am unable to see it. The Court is to inquire. It has jurisdiction "to enable"—that is, for the purpose of enabling—"to enable," that is the preamble—"the *cestuis que trustent*," and nobody else, "to become certificated owners of certain portions of the said block": that is the preamble to section 4. Very well: what are you going to do, if no person ever was a trustee, in order to enable the *cestuis que trustent*, if there be such, to become certificated owners? You are to make inquiries; and for that purpose, and not further or otherwise, "The Native Equitable Owners Act, 1886," is revived and re-enacted.

Then begins the second paragraph: "In exercising jurisdiction under this Act" the Court is given a certain authority which it would not have under the Equitable Owners Act—viz., to exclude the trustee from the beneficial interest; and in section 5 the orders made must declare the persons beneficially entitled to the division. The word "beneficial" is underlined and marked. If it were