

not there it would not matter, but there it is. The Legislature, in section 5, accentuates and enforces what it said before. What you have to determine is the *cestuis que trustent*, if there be such.

I confess I do not know how this Court has any jurisdiction to inquire into the propriety or impropriety, or regularity or irregularity, of the proceedings of the Court of 1886. The time for rehearing has passed. The time for appeal, if there had been one at the time, is past. The Court of 1886, acting rightly or wrongly, ascertained a portion of land called "Division 14." As to that Division 14, this Court is told to ascertain whether there be or be not *cestuis que trustent*, and the argument that is offered to the Court is that there never was any Division 14, because it never ought to have been divided, the Court having no jurisdiction to do certain things. The object of inquiry is to ascertain whether that person is or is not a trustee, and, if so, to determine who are the persons beneficially entitled, as used in the second paragraph of section 5, or "the *cestuis que trustent*," as used in the first paragraph.

I hope, your Honour, I am not presenting something stronger than an argument on this point. It is difficult sometimes, when one hardly sees how the question is arguable, to avoid putting one's argument in terms stronger than one would like to use. I do not intend to be disrespectful to my learned friends or to the Court, yet I confess that I am unable to do more than point to the Act as the answer to the suggestion of jurisdiction of this Court to go into questions of the method or the manner in which Judge Wilson exercised his jurisdiction. Take this question of voluntary arrangement. Judge Wilson decided, as a matter of fact, that there was a voluntary arrangement. Now, he may have been quite wrong in that—wrong in law, if you like—but he came to that conclusion. If he was right in his conclusion, then he was right in proceeding, as he minuted, to carry out the voluntary arrangement. Certain people—your Honours, if you please—turning up the records at this date, finding dates of deaths, and so forth, may find that in your opinion Judge Wilson ought not, either in law or in fact, to have come to the conclusion that there was a definite voluntary arrangement which he ought to have acted upon; but he decided that there was, and, whether his decision was right or wrong in law, who has any right to challenge it now? This Court? If so, where does it get the authority? And what decision is this Court, supposing it has authority, to give? Has this Court authority to ascertain who are the owners of Block 14, if they be not *cestuis que trust*? Has this Court authority to award Block 14, say, to the man who got a square foot in the corner of the block?

If this Court can review the decision of Judge Wilson upon any point it can upon all points. It may come to the conclusion that he was quite wrong in putting Kemp into this block—that he ought to have put in, for instance, Hunia. Has this Court authority to do that? If it has not authority to reverse one decision surely it has no authority to reverse another.

I have said that the Act gave the additional power, which you had not got under the Equitable Owners Act, of excluding the trustee upon grounds which are specified in the section. That power you could not have obtained under the Equitable Owners Act; and that is the reason why the second part of section 4 confers a very proper jurisdiction in addition to the jurisdiction conferred by the Equitable Owners Act. But if this Court were to proceed to make its award, upon what basis is it to proceed. Upon what evidence? And this Court would then be a Court of original jurisdiction in the matter of hearing all applications for investigation of titles to land. It is true possibly—I don't know—that the Supreme Court or the Court of Appeal might interfere in some way or other with the judgment of the Native Land Court given even so long ago; but this Court has not that jurisdiction, except by way of appeal, and there is no such appeal. Nothing has even been confided to your Honours by way of appeal. What is confided to your Honours is a special and original jurisdiction in this matter, to hold a particular inquiry. I ask the Court, might not this jurisdiction equally well have been conferred upon any Court, upon the Royal Commission, say, upon the Supreme Court; any Court might properly and equally have inquired into this question of fact and mixed question of fact and law, whether there was or was not a trust, of which Kemp, the owner, was the trustee; and to challenge the existence of Kemp as a trustee, as your Honours must challenge by challenging the regularity of the proceedings upon the partition and the order which constitutes him a trustee, seems to be so illogical that I hardly know quite where I ought to meet the argument?

I pass now to another section. I understand that learned counsel for the Crown, or for the counter-claimants—one of the opposite parties—contend that because the Land Transfer certificate was made null and void by the latter words of section 5 therefore the land is open for inquiry by this Court. I do not know whether that argument has been addressed to the Court. I must meet it, I presume. My answer is—First, the nullification of the Land Transfer certificate does not nullify the order in favour of Kemp. You are aware that in the first of the cases *re the Mangaohane Block* a certificate was set aside by the Supreme Court, but not the order. It does not affect the ascertainment of the title by the Native Land Court that the document of European title has been rendered null and void by the Act. But, secondly—and this is the more important point—every statute is read *secundum subjectam materiam*. It is only for the purposes of this section that the Land Transfer certificate is ordered to be null and void; for the purpose of enabling the other persons to be registered, if there be any, the Land Transfer certificate is deemed to be null and void. The principle is this: When a statute interferes with a vested right of any kind, title, or anything else, the first principle is that you are to read it as interfering only for the purpose and to the limited effect which is required for effecting that purpose; and that your Honours will find in Maxwell on Statutes under the heading of "Subject-matter." Supposing you find that Kemp is not a trustee, and that there was absolute ownership in him, do your Honours mean to say that there will have to be a new certificate issued to him in respect to this block. The Land Transfer certificate by this section is nullified if you find *cestuis que trustent*, but it is manifest, I submit, that, if your Honours find the issue in favour of Kemp, he holds the certificate notwithstanding the