JUDGMENT OF HIS HONOUR MR. JUSTICE DENNISTON.

I agree with the judgment of his Honour the Chief Justice. The case stated by the Native Appellate Court propounds for the consideration of this Court no less than eighteen questions, raising a very much larger number of minute issues. The manner in which the questions have been framed was the subject of comment during the argument. Many are obscurely worded, and almost all are framed argumentatively, and in a way to suggest predetermined conclusions by the Court. These peculiarities of form were, however, admittedly owing to the fact that they were mainly framed on the formal propositions submitted by counsel in the argument before the Court, and it is to mention this only that I refer to the matter.

What answer is to be given to the questions, and, as to a number of them, the question whether it is necessary to answer them at all, depend upon the result of a preliminary inquiry into the meaning and object of the Act under which the Appellate Court in this matter derives its jurisdiction ("The Horowhenua Act, 1896"), and what was intended to be the scope of the inquiry under it. It was contended in the first place that the Act contained a legislative assumption, and consequently a legislative enactment—that Section 14 of the Horowhenua Block was, in fact, trust property. In this I am quite unable to concur. There is nowhere any specific statement to that effect. The Act recites the fact that a Commission had sat to inquire into the Horowhenua Block, and that it was expedient to, as far as practicable, give effect to the recommendations of such Commission. But it does not profess to accept the findings of that Commission; and it neither states such findings or recommendations, nor incorporates them directly or by reference. The preamble is a mere statement of the reasons for passing the Act. Section 4, which was relied on to support the contention I am dealing with, begins "to enable *cestuis que trustent* to become certificated owners of certain portions of the said block," the provisions of the said Act, excepting section 18 of "The Native Land Court Acts Amendment Act, 1889," shall apply to certain divisions of the block, including Division 14. This, in my opinion, does not even in form assume that there must be *cestuis que trustent* as to all these divisions. It must, I think, be read, "to enable the *cestuis que trustent*, if any."

It might have been better to have used clearer language. The draftsman has evidently had recourse to section 2 of "The Native Trusts and Claims Definition and Registration Act, 1893," but has, I think, omitted to notice that the concluding words of the paragraph from which the form is taken alleges the fact that the lands the subject-matter of the section had been granted to persons who had been selected to be trustees for themselves and others, but who had been placed by such grants in the position of absolute owners of such land. This, of course, made the opening words clear and unambiguous.

There are no such words in the Horowhenua Act, and their absence is a significant indication of the intention of the Legislature. Nor, do I think, can any such inference be drawn from the language of section 10. The Public Trustee, or some party other than the grantee and the person whose dealings are impugned, must of course be intrusted with the initiative as to any proceedings to attack such dealings. The Supreme Court has ample powers to deal with any breach of trust or any fraud which would entitle any person prejudiced thereby to legal redress. The limitation of time to six months may reasonably be attributed to the conviction that proceedings should not be unduly protracted, and to the belief that proceedings in all the Courts might reasonably be expected to be concluded within six months. It would require, of course, the plainest and most explicit words to compel a Court to conclude that the Legislature had not only cancelled the Land Transfer certificate which barred the way to inquiry, but had predetermined, without any judicial investigation, one of the principal questions in controversy between the parties. An Act which takes away from an individual a status which he has acquired in due course of law, and which retrospectively subjects his property to special disabilities, and to investigation under special conditions and by a new tribunal, is not to be loosely construed. Legal rights, if destroyed, must be destroyed by express words, and not by a strained and doubtful inference.

We have next to ask whether the intention in the Act was confined to re-enacting, for the purposes stated in the 4th section of the "Native Equitable Owners Act, 1886," and amendments. That is the only directly empowering section, unless sections 14 and 15 can, as contended, be held to confer further special powers. I do not think that these sections can be held to be more than giving to the Court the powers and jurisdiction of the Acts therein mentioned, so far as necessary, in the words of section 15, for the purpose of carrying out the provisions of the Act.

The section refers only to procedure. The empowering provisions of the Act must be sought in the other sections. The words "special powers" are, I think, satisfied by the provisions of section 4, which, besides re-enacting the Equitable Owners Act, provides specifically for specially dealing with the interests of any person found to be a trustee.

The empowering provisions of the Native Equitable Owners Act are contained in a few lines. If it had been intended to give any larger power, particularly if it had been intended to give the extensive power now contended for, I cannot understand why it was necessary to re-enact that Act at all. What, then, are the powers conferred by the Native Equitable Owners Act? Under it the Court had power, upon the application of any Native claiming to be beneficially interested, to make inquiry into the nature of the title to such land, and into the existence of any intended trust affecting the title thereto. According to the result of such inquiry, the Court may declare that no such trust exists, or, if it finds that any such trust does or was intended to exist, then it may declare who are the persons beneficially entitled.

Power is further given to make orders under which the persons found to be beneficial owners are to be deemed to be such owners as if their names had been inserted in the certificate or grant. What is meant by making inquiry into the nature of the title? Was it intended that under it the Native Land Court should have power, on the motion of any Native who chose to assert that he was beneficially interested in land held by another Native, on what was, on the face of it, a good