ceedings of 1886, but an original jurisdiction to inquire, because they suggest in their question that they have original jurisdiction to investigate mere procedure while exercising jurisdiction under the Act. The Appellate Court has no original jurisdiction. Sitting as an Appellate Court, there is conferred upon it all the jurisdiction of the Native Land Court; but it cannot sit originally, except under the terms of the Horowhenua Block Act. It professes to sit under the Horowhenua Block Act, and professes to have an original power of ascertaining. The proceedings of 1886 were to ascertain by the Native Land Court Act the quantum of the interests.

*Mr. Justice Denniston:* You say that section 15 has been read too largely by the Appellate Court: it ought to be limited as in section 10. I hope these are not their questions.

*Mr. Bell:* Yes, they are; and we protest against every one of them. The President of the Appellate Court took a very strong view of its jurisdiction. He was asked to submit a question to this Court, and possibly has put it from his own point of view; but no doubt questions are so put that they are sometimes difficult to answer. I wish to show the Court that there was a special jurisdiction in the Appellate Court to do that which, and no more than that which is permitted to a Court under the Equitable Owners Act. And, turning to the Equitable Owners Act, I ask the Court to determine that what this Court has inquired into is entirely outside of the powers conferred upon them by the Equitable Owners Act.

*The Chief Justice:* Do you admit that this is a proper subject for inquiry—whether this block was or was not intended by the Native Land Court to be for Kemp beneficially, or for Kemp as a trustee?

*Mr. Bell:* That is what we say is the question, and the only question.

*The Chief Justice:* Not as to the procedure of the Court in arriving at that determination, but what its intention was—whether by reason of the change of the allotment from Ohau to the lake—which one side says was a blunder or an oversight, and that they never did allot this beneficially to Kemp, whereas you say they did allot it beneficially to Kemp.

*Mr. Bell:* That is what we say is the only question. I submit the question, under the Equitable Owners Act, is whether the Native Land Court has issued a certificate to a man in his own name which it intended should issue for the benefit of others. I will admit, however, that this is open—that supposing the Natives had all agreed amongst themselves that a certificate should issue to A, and the Judge had no intention in the matter, but issued the order in accordance with the common request, and it was then proved that the intention of the Natives who approached the Court and got it to do that administrative act was that it should be a trust instrument, I am not prepared to deny that that would be within the Equitable Owners Act. Supposing the Judge had been unable to give any evidence at all, and supposing that it had been proved that Block 11 was intended to be, not for Warena Hunia and Kemp, but for the other owners, I am prepared to admit that would be a matter the Court could inquire into under the Equitable Owners Act. But I do submit that the question under the Equitable Owners Act was whether the block of land was intended to be issued to the persons named therein, or was intended to be issued beneficially. The preamble of the Equitable Owners Act says,—

"Whereas under 'The Native Lands Act, 1865,' certificates of title to, and Crown grants of, certain lands were made in favour of or to Natives nominally as absolute owners: And whereas in many cases such Natives are only entitled and were only intended to be clothed with title as trustees for themselves and others, members of their tribe or hapu or otherwise: Be it therefore enacted," &c.

We may be wrong in that contention, but that is the contention we have submitted. The intention of the Legislature, as expressed in the Horowhenua Block Act, is, we submit, simply to clothe the Appellate Court with the jurisdiction granted by the Equitable Owners Act, and any further jurisdiction it might require for the purpose, such as stating this very case for the opinion of the Supreme Court. We submit the Court may then put on one side the Horowhenua Block Act, and look to the Equitable Owners Act, and then say whether the Appellate Court has been concerning itself in matters which have nothing to do with this matter.

*The Chief Justice:* Supposing it was said it was simply a Native Appellate Court of inquiry, to find out any little blunders of the Native Land Court. The Legislature hardly intended that.

*Mr. Bell:* Let me give one instance, and it is an illustrative one. Question 5 asks, "Was it not a condition precedent to the exercise of jurisdiction by the Native Land Court in 1886 that the original certificate of title issued under the 17th section of 'The Native Land Act, 1867,' to Meiha Keepa te Rangihiwinui should be surrendered, or an order made for its cancellation?" Now, the Division Act begins by dealing with Crown grants, which are records of the Lands Department. Its provision for division under section 17 is similar, *mutatis mutandis*, in order to get rid of the record, which is equivalent to *scire facias*. It requires that a certain thing must be done by the Minister of Lands, and the grant of land must be surrendered and cancelled before the Land Court proceeds, and it refers to the course to be taken by the Lands Department. We submit, if driven to this question, that it is manifest that it has no relation to any equity; it is a technical legal provision.

But is it not comic to suppose the Legislature intended the Court, in dealing with this question, to ascertain whether a Judge, before he proceeded to make his inquiry under the Act of 1886, did or did not formally cancel all the certificates. "If not," they say, "is not the whole thing open to us?" The learned Judges of the Appellate Court, having discovered this and a series of other flaws in the proceedings of 1886, considered this matter relevant to the inquiry whether the persons to whom the orders were issued were or were not intended by the Court to be beneficially entitled. We submit to the Court with all confidence that that is not the intention of the Equitable Owners Act, and we ask the Court to approach this case with that in view. We approach this case with an argument founded on that, and therefore propose to deal very lightly with the several questions stated by the Native Appellate Court, which, I suggest, might be very useful to them, and might be material to this Court, where it was considering *certiorari*, but have nothing to do with persons under a beneficial ownership whose rights are affected.