

contrary. If I could do that before the Supreme Court, what power has the Appellate Court to deal with the question? By the Act of 1895 the Court will see that the Appellate Court has all the powers of the Supreme Court. Section 58 of the Native Land Laws Act says,—

“In any case in which, but for this Act, recourse might be had to the Supreme Court, the remedy shall be by application to the Appellate Court, which shall have full power on such application to deal with and finally determine all questions at issue, and to grant such relief as to such Court shall seem just, or as shall in the opinion of the Court be necessary, having regard to the nature of the case and the rights of the parties.”

Now, the Native Appellate Court, under section 15 of “The Horowhenua Block Act, 1896,” has this special jurisdiction conferred upon it, because it expressly 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.’”

So far as I make out, Kemp has only applied for Section 14 in his application; but others have applied for Sections 6, 11, 12, and 14. With regard to section 58 of “The Native Land Laws Amendment Act, 1895,” there was power under that for the Native Appellate Court to do what the Supreme Court could have done by *certiorari*. The Supreme Court had no power to deal with Native lands except perhaps by mandamus, and all these powers are expressly given to the Native Appellate Court by section 58 of “The Native Land Laws Amendment Act, 1895,” and it has power to do that under section 59, which says,—

“The Appellate Court shall have supreme jurisdiction in all questions as between Natives and Natives affecting the title to any Native land, or to land or personal estate owned by Natives; and shall exercise or decline to exercise such jurisdiction free from the interference or control of any other Court whatsoever; nor shall any proceeding relating to any such matter as aforesaid be removed from the Appellate Court into any other Court by writ of *certiorari* or otherwise.”

Now, if the Supreme Court had jurisdiction, has not the Appellate Court the right to inquire as to whether these were valid orders or not?

*Mr. Justice Denniston*: Assuming that, according to your present construction, the question of trust had not been determined, your argument would go to show that this man's statutory rights have been taken away, and, having been taken away, it was intended that the Court should declare him a trustee, not on account of any fraud or impropriety, but on account of a preliminary error in the proceedings of the Court.

*Sir R. Stout*: No, your Honour. The point is this: If the Native Land Court had no jurisdiction to make the order vesting the land in him, surely the Appellate Court has the right to decide that.

*Mr. Justice Denniston*: Supposing there had been no fraud or misconduct, is it credible that the Legislature would remove his rights, and allow a Court to open this matter?

*Sir R. Stout*: What happened in the Mangaohane case when the Supreme Court found an order had been made without jurisdiction? I am arguing that the Legislature has not said there was a trust. Then, how can a trust be found?

*The Chief Justice*: I hitherto thought *cestuis que trustent* was an expression used for registered owners.

*Sir R. Stout*: I say that *cestuis que trustent* means *cestuis que trustent*, and not registered owners. But I have left that point. I am dealing now with the assumption that the Legislature has simply set the land certificates aside, and the question is whether we can attack these certificates of 1886.

*The Chief Justice*: The answer to you is this: that the main idea of the Act, plainly stated, is that whatever jurisdiction was given to the Native Land Court under the Equitable Owners Act—and that is the primary thing you have to look at—it is perfectly true that the Native Land Court Act may properly be used for the purpose of allotting the interests, and to find out what the interests are. The main idea is first to find out what, if any, trust there is. There are certain certificates or orders of the Native Land Court, and everything after that is swept away. Now, there are some people who say they have a kind of interest which could be traced under the Equitable Owners Act, and the Legislature say that, notwithstanding that the Equitable Owners Act has been repealed for this purpose, the Act shall be revived, and these people's claims dealt with under that Act.

*Sir R. Stout*: My answer to that is twofold: The Horowhenua Block Act says the Equitable Owners Act is revived, but it does not stop there. The Act confers far greater power on the Appellate Court in dealing with this block than any Court had when the Equitable Owners Act was in operation, for the purpose of finding out whether there was any trust or not. Now, how is that to be found out? In the case of Warena Hunia and Kemp the certificate did not state there was a trust, and the Supreme Court proceeded to find out how that land became vested in Kemp and Warena.

*The Chief Justice*: Could the Court, under the Equitable Owners Act, have done that?

*Sir R. Stout*: Yes. I say the words “inquire into the titles” include everything.

*The Chief Justice*: You say that under the Equitable Owners Act the whole thing could be ripped up, and the invalid proceedings in the Native Land Court could be inquired into, and if found to be invalid redress could be given.

*Sir R. Stout*: Yes.

*The Chief Justice*: You say there is nothing in the Equitable Owners Act which would limit the power of the Native Land Court to set aside all these proceedings.

*Sir R. Stout*: Yes; and the best proof of that is this: How are you going to prove a trust? A certificate may disclose no trust; you must go behind it. But I do not rely upon the Equitable Owners Act alone; I say section 58 of the Native Land Laws Amendment Act of 1895 gives the