

of the person applying has been thereby prejudicially affected, the Chief Judge may make such order in the matter for the purpose of remedying such error or omission as the nature of the case may require: Provided that no such order shall affect or be deemed to affect the validity of any registration under a Land Transfer Act, or of any conveyance, transfer, mortgage, lease, contract, lien, or transaction made, given, or entered into of or in respect of such land, after the title to such land shall be ascertained, and before public notice is given of the intention to hold an inquiry. An order so made shall be final and conclusive."

Then, upon that case of Pokopoko, comes the determination of the case of Winiata against Davy, first by his Honour Mr. Justice Richmond, and secondly by the Court of Appeal as to what is error within the meaning of the section. What happened there was this: The Chief Judge, exercising his jurisdiction under this section, found as a fact that, first of all, Winiata was prejudicially affected in title by an error made by the Court. He found that the Court thought that Pokopoko was south, and excluded Pokopoko for the purpose of leaving Winiata in the Awarua Block, outside the Mangaohane. But it was proved, and he did not dispute it, that the Court which drew the line knew where it was drawing the line—that is to say, the boundary-points were known to the Court, although the position of the Pokopoko Settlement was not known. I submit that is strictly analogous, as showing how far you may rove. One would expect that in such a case, far more than in the present case, the roving commission would extend to rectify such a blunder; but the Court of Appeal and Mr. Justice Richmond held differently. They held that the order was in excess of the jurisdiction, and that the Chief Judge must be prohibited. The Chief Judge, acting under this jurisdiction, found the error, and then remedied it by putting Winiata and his friends into the block. But on both grounds, not only because he proceeded too far, but also because this was not an error of the quality which was defined by section 13, the Court of Appeal issued the prohibition. We submit that case is strictly analogous. The contrary construction which was contended for here is exactly the construction contended for in that case on section 13—a roving commission to inquire as to the intention of the Court, but as to the legal effect of the Court having acted incorrectly or improperly.

*Sir R. Stout*: First, as to the case of Chatterton: that is really against my friend. Lord Coleridge was trying the case without a jury, and, instead of saying it was a verdict for plaintiff or defendant, and giving his reasons orally, he chose to give them in writing. The Court said he was not bound to give them in writing; and could it be said that because he had given his decision in writing that that would exclude his right to make it orally? There is the case of *Allerly* (3, Appeal Cases, 489). It is a case of copyright; and the Lord Chief Justice ordered a verdict to be entered for defendant, and gave a written note saying that the defendant had copied to some extent two parts of the appellant's drama, but that it was unsubstantial, and therefore he entered a verdict for the defendant, who wanted to upset the verdict in consequence. I submit that that authority does not deal with their case. On page 196 of "*Best on Evidence*" it says that if a Judge is called as a witness he must be treated like any other witness, whether he is sworn or not. In the case of Winiata and Donnelly the point was, had the Judges made a mistake; and before the jurisdiction of the Chief Judge could come in under section 13 of the Native Land Court Acts Amendment Act of 1889 it had to be shown that a mistake had been made; and all that the Court of Appeal said was this: "Is it not very strange, that if you rely on the Judges making a mistake, you should not have asked them if they had made a mistake? The question was whether there was a mistake or no mistake, and you have not asked them." The point, therefore, is that that case also does not help my friend at all. It only amounts to this: that if a mistake is alleged to have been made by any Judge the Judge should be asked about it; and therefore the case of Winiata and Donnelly has no bearing on this point. As to the argument about section 13, and the reference to the Poverty Bay grant, that does not help my friend at all; on the contrary, it helps me. The terrible effect he referred to is limited to three years, and this Act is not in existence now. It shows that my interpretation of *cestuis que trustent* is right. The very use of the words *cestuis que trustent* implies that my interpretation is right—that these people have been put in a grant as absolute owners, and this is to give the right to the *cestuis que trustent* to have the matter investigated.

*Mr. Justice Denniston*: I do not think the three years make the slightest difference in your argument, except that it remains *inter partes* for three years; beyond that, it does not affect Mr. Bell's argument.

*Sir R. Stout*: The point my friend was arguing was this: that this Act was in force now. There is nothing in the point as to the meaning of this section 13, and the decision in the case of Winiata and Donnelly. The whole question turned on an error of omission, and, if we have to go into the question of cases analogous, I would refer your Honours to the case of *Arapata and Karina* (12, New Zealand Reports, 696). The Chief Judge there did something he was not authorised to do. He adjudicated on something which was not properly before him, and therefore it was held to be an error of omission, and is referred to by Mr. Justice Richmond on page 217 of this case of Winiata and Donnelly. The decision of the Court of Appeal in dealing with that case was this: The point was, where was the boundary-line drawn; and the Court said there was no error as the boundary-line was drawn, although they may have made a mistake in drawing the line. It was true they would not have drawn the line where they did if they had had other facts to guide them. But the Court of Appeal said, "How can that be an error? A Judge or jury may come to an erroneous conclusion, but that is not an error." That error of omission could not apply, because the boundaries were in the exact position the Judges intended to draw them. We are contesting this question of trust or intended trust, because we say the Judge did what Mr. Justice Richmond says was extra-judicial. We say he had no power to make an order for Kemp on a voluntary arrangement when the voluntary arrangement did not exist. Your Honour asked a question, whether there is no provision in the Act for the decision of the Court being limited. There is, I submit. Section 12 of "The Native Land Court Act, 1880," contains this provision: "Registers of titles shall be kept by the Court, in which shall be recorded the result of every case brought before the Court."