

and you could not set up that fiduciary capacity against any of the certificated owners. It is submitted, therefore, that the answer to question 13 is necessarily one that is qualified, and answered and met by the answers to the previous question, and that it is all qualified by the answer which the Court should give in its judgment—namely, that these matters are extraneous to the jurisdiction under which it is sitting.

*Sir R. Stout*: I simply submit that my friend has been traversing the point he argued before—that the Horowhenua people are confined within the four corners of the Equitable Owners Act. The facts submitted by the Appellate Court, summarised, are: First, that the original title was under the 17th section of the Act of 1867; second, that the grant was issued to Kemp on behalf of himself and the other 142 registered owners; third, that the Court sat to partition the land under the Land Division Act of 1882; fourth, that the Judge proceeded to partition; fifth, that the partition was not made by the Judge judicially. I submit that the Appellate Court have come to that conclusion, and have a right to come to that conclusion.

*Mr. Bell*: It is for us to come to a conclusion.

*Sir R. Stout*: I submit not. The Court cannot leave its facts to this Court to determine. It is expressly stated in the Act that it can only put questions of law to this Court.

*Mr. Justice Denniston*: The question of what is judicial and what is administrative may be largely a question of law.

*Sir R. Stout*: The case is stated in section 92 of "The Native Land Court Act, 1894": "The Appellate Court may state a case for the opinion of the Supreme Court on any point of law that may arise, and the decision of the Supreme Court on such point of law shall be binding on the Appellate Court." Therefore this Court has no power to deal with statements of fact at all. The sixth fact is that the Judge sat on the 25th November, and in acting administratively, in pursuance of a voluntary arrangement, did award this block to Kemp, and not for himself. That is, what he awarded on the 25th November; that is clear. The next fact which is clear is that Kemp on the 2nd or 3rd December—we say the 3rd, because that agrees with the minute-book—applied for the land himself, and the Judge on the 3rd challenged objectors. None appeared, and he made the order for Kemp; but that order appears to be a confirmation of a previous order made on the 25th November.

*The Chief Justice*: Do you admit that the case states that Kemp did apply for himself?

*Sir R. Stout*: It does not say that he himself applied, but simply an application was made that the grant should be issued in his name. That is admitted, and those are the facts found. "The Court, however," it says, "makes no definite finding on the point as to whether No. 14 was at the Court of 1886 awarded to Meiha Keepa beneficially, as it is not necessary for this case to determine it." It is rather peculiar that the Assessor's evidence was not taken as to what he understood. He is just as much a party of the Court as the Judge, and I apprehend that Judge Wilson cannot speak for the Assessor, and contend that the award is incomplete if the Assessor does not agree. Then the Court says, in paragraph 13,—

"The Court is of opinion that Judge Wilson is under a misapprehension as to the order in which the subdivisions were made, as it is sufficiently manifest from the minutes of the Court of the 25th November, coupled with other circumstances, that Subdivision 3, afterwards numbered 14, was the parcel of land before the Court on the 25th November, and not No. 9, which only came before the Court for the first time on the afternoon of the 1st December. As regards that part of Judge Wilson's explanation concerning the application made by Meiha Keepa on the 2nd December, to have No. 14 allotted to him for himself, there is no entry in the minute-book in support of the circumstance; but this is not conclusive proof that no such application was made."

The application in the minute-book was on the 3rd, and that application shows that this application for Block 14 was made on the 3rd. In the minute on Subdivision 14 the application is set out, and states that objectors were challenged, but none appeared. My friend seems to think there was some suggestion of a new voluntary arrangement as to Section 14, but there is no such thing stated in the case, and I assume that the Court will not accept it as a matter of fact. I submit that the confirmation applies this theory which was set up in the Appellate Court—namely, that the two blocks were to be held, which would they accept. Some of the Whatanuis wanted this new Block 9 and some wanted Block 14, and the fact that there was a delay of two years before they took up Block 9 shows that there was some doubt as to whether they would accept it or not.

*Mr. Justice Denniston*: Supposing that the trust had been intended to be given to Kemp, then there seems to me to be nothing in the confirmation, because you have to go outside the record to get the evidence of another trust. The record as it stands is a property in Kemp.

*Sir R. Stout*: But there is this very important point: that the Judge seemed to imagine that what was done on the 25th November was void. Your Honour will see that in the minutes of the 25th November the 1,200 acres are to go to the Whatanuis. I submit that shows that a confirmation to Kemp must be a confirmation in pursuance of what had been done in the Court before, and it was not intended in the Court before that this was to go to Kemp himself. The Court will surely take the minutes, because I have already quoted section 12 of the Act of 1880, which shows that the Court is to have the register of title. I next come to this point about what is clear from the evidence—namely, this fact, that there was no voluntary arrangement in the sense in which the Act speaks of a voluntary arrangement. I do not understand very well what my friend's contention is, about this Native Land Act and section 3 of the Native Land Division Act. At one time he says that the whole Act is not incorporated in the Native Land Division Act. Could there be a voluntary arrangement at all, then?

*Mr. Bell*: I did not say so.

*Sir R. Stout*: He says he reads this into the Act: "In carrying this Act into execution the Court may proceed in manner prescribed by 'The Native Land Court Act, 1880,' with reference to Native land, and may exercise all the powers therein contained." Does that imply that the Court can proceed to carry out a voluntary arrangement?