

*Mr. Bell* : I said these words of section 73 introduced the section of the Act of 1880 which permits the Court to ascertain the voluntary arrangement.

*Sir R. Stout* : My friend has forgotten what he said dealing with voluntary arrangements as to surveys.

*Mr. Bell* : I said they may.

*Sir R. Stout* : I understood you to say the surveys were not included.

*Mr. Bell* : I said, with regard to survey, that the word "may" was permissive, and that, although they had before to deposit the plan, they would not by section 73 be required, as in the other Act.

*Sir R. Stout* : I am prepared to take it either way. I assume that the Court could proceed under section 56 as under section 58 as to evidence. Then, the Court has to consider what is a voluntary arrangement within the meaning of section 76. Can there be a voluntary arrangement among the Natives themselves? Can there be a voluntary arrangement if they do not all agree? Now, there is no such question here as my friend tries to raise—namely, that the Judge found that there was a voluntary arrangement, or found that all the Natives agreed. He proceeded on the assumption that a voluntary arrangement could be come to without all the Natives agreeing. If he decided, for example, that there is evidence before him that all the Natives are in accord who are the owners, I do not say we might not be bound by that; but if it is proved by the Appellate Court, as the Court has found, that the Natives were not there, and there is no finding in the Court by Judge Wilson that the Natives were there, then, I submit, there could be no voluntary arrangement, because it must be a voluntary arrangement amongst all those interested.

*Mr. Justice Denniston* : He found there was a voluntary arrangement.

*Sir R. Stout* : No, he did not, your Honour.

*Mr. Justice Denniston* : Can you say the Appellate Court is entitled to say that when he found there was a voluntary arrangement he meant something else, and that the law meant that all the parties were joined?

*Sir R. Stout* : I say there must be an expressed finding, and there was none; and the Court of Appeal's decision in Winiata and Donnelly states that the mere finding of a Judge, which is not correct through a mistake or an omission, does not bind the Court. In that case they found there was no jurisdiction, and prohibited the Judge from proceeding. My assumption is that Judge Wilson had no more power than Judge Davy had in that case to find a voluntary arrangement if none existed. I am clearing the ground for two points, dealing first with this point—namely, that it appears clear on the face of the proceedings that there was no voluntary arrangement within the meaning of the Act, whether Judge Wilson found it or not.

*Mr. Justice Conolly* : Where is this fact—that there is no voluntary arrangement?

*Sir R. Stout* : It is called an alleged voluntary arrangement. It is in paragraph 3, and it says, "A large number of the registered owners of the said block were also dead or absent at the time the said voluntary arrangement was made." Secondly, I submit there could be no voluntary arrangement within the meaning of the Act. I say it is perfectly plain that they had none from other evidence, and not from the Judge, because the registered owners were absent.

*Mr. Bell* : I say, rightly or wrongly, he assumed or found that there was a voluntary arrangement under section 56, and was acting under it. He may have been quite wrong in law and in fact; but, as a matter of fact, he found there was a voluntary arrangement.

*Sir R. Stout* : As far as the minute-books are concerned, the point would be whether there could be a voluntary arrangement when the Court did not enter the decision in its minutes. Section 56 of the Act of 1880 says, "It shall be lawful for the Court, in carrying into effect this Act, to record in its proceedings any arrangements voluntarily come to amongst the Natives themselves, and to give effect to such arrangements in the determination of any case between the same parties." I submit that would be a condition precedent to him acting under any voluntary arrangement—namely, that it had to be recorded in the minutes. I am also submitting this: that the Court of Appeal in Winiata and Donnelly held that, although there was an omission found by Judge Davy, they issued a prohibition against him, and that his decision was not binding on the Court, and could be quashed. I rely on that point in Winiata against Donnelly as a conclusive authority to show that the mere decision of a Judge of the Native Land Court does not bind this Court in a question of jurisdiction. I come now to the survey point. I understood my friend to argue that these sections 27 to 32 inclusive were not binding on the Native Land Court, and he cited section 3 of the Native Land Division Act to show that the provisions of the Native Land Court Act could not be applied by the Native Land Court, and that consequently they now complied with sections 27 to 32. Let us assume that. Then, may I ask, what power had they to alter any plan except the plan approved by Judge Wilson and the Assessor? This point has been answered in the case *In re Te Waha-o-te-Marangai Block* (15, Law Reports, p. 171), issued in March of this year.

*Mr. Bell* : Is that a subdivision case?

*Sir R. Stout* : That was a subdivision case, and the question was whether the plans could be altered after the Court had come to a decision. That is the point; and they relied upon this section of the Act of 1889—namely, section 11:—

"If it shall appear to a surveyor, when making a survey in pursuance of any order of the Court, that a deviation from the line laid down by the Court would for any reason be expedient, he shall give immediate notice thereof to the Registrar, and upon receipt of such notice a Judge may make such inquiries in the matter as he may think fit, and amend the order if he shall consider it advisable so to do."

Well, it was contended that that could not mean doing what was done in this case; but, as Mr. Justice Edwards says, "I am satisfied that this narrow construction . . . ought not to be placed upon the enactment in question." My point is this: that my friend cannot rely upon sections 27 to 32 to amend the plan other than before the Court. Would he point out to me under what section the plan could be amended? If the Court has chosen