

to say the block ends with the railway-line, what power had the Judge of the Court, without the Assessor, to change the block? The Court will notice that the Court has to do all these things. The Court consists of a Judge and an Assessor; it does not consist of a Judge alone. Section 5 of "The Native Land Court Act, 1880," says, "The Court shall consist of one Chief Judge and such other Judges, together with such Assessors, as the Governor may from time to time determine." Here the award in this case was made by a Judge and a particular Assessor. Now, I want to know what power there was without the Assessor to change the block. In the case I have referred to counsel relied on the 11th section of the Act of 1889, but the Judge said that in addition they could import these sections 27 to 32. But they could not rely upon these sections to alter the plan. Mr. Justice Williams said that if sections 27 to 32 were not complied with, then there was a want of jurisdiction; and Mr. Justice Conolly agreed with that decision. That is in the Mangaohane Block case, at pages 753 and 758 (9, N.Z. Law Reports). I think those pages show that if these sections 27 to 32 are not complied with, then there is no jurisdiction. Now, I want to know how Judge Wilson has power to alter the plans of a Court. There is no power given under the Native Land Division Act to alter plans or evade a decision once pronounced by a Court. My friend says the surveyor comes in between the sketch and the final plan; but where is the right for the surveyor to come in? I say, strictly speaking, except that there is a statutory power, or the Court meets again, no small details can be altered. The Court has before it what this plan says [plan referred to]. I presume the surveyor would, perhaps, have to plot them on the ground.

*Mr. Justice Denniston*: That could be done afterwards.

*Sir R. Stout*: The Act of 1880 presumes them to be plotted on the ground. The surveyor goes to the ground, and he finds that when he comes to plot the land on the ground the maps are inaccurate. He plots on the ground something which was not plotted in the Court. There was a preliminary plan, prepared, no doubt, by a surveyor. The point is this: The Court, when it made its order, proceeded on a plan—there is no doubt about that; and it marked its order on a plan. That is what it did on the 3rd December; and the Judge sent this plan to a surveyor to plot on the ground. That being so, the order on the face of the plan was that this block was to the west of the railway-line. The surveyor then goes and changes the order of the Court. Judge Wilson complained very bitterly of the surveyor upsetting his subdivision in favour of Kemp. My point is this: that there is no statutory power for a Court to accept the altered plans of a surveyor unless the statutory provision in sections 27 to 32 of the Act of 1880; and Mr. Justice Edwards, in his judgment on this point, said,—

"The Railway Company appeared by their counsel to show cause against the rule. Upon the argument it was contended that the authority given by section 11 of the Amendment Act of 1889 was simply an authority to authorise a deviation from the lines originally laid down upon the sketch-map, and that this authority could not extend to so radical an alteration of the boundaries as, even with the consent of all parties interested, to place portion of a subdivision in an entirely different part of the block from that shown upon the sketch-map. I am satisfied that this narrow construction, which is obviously opposed to the true interests of the Native race, ought not to be placed upon the enactment in question; but even if the section ought to be so construed, I think that the plaintiff fails in establishing that he is entitled to have the rule made absolute. The proceedings upon the partition were, as has already been pointed out, under 'The Native Land Court Act, 1880,' and I think that what was done may be supported as an exercise of the jurisdiction of the Court under sections 27 to 32 of that Act. It is, I think, plain that all that has been done by the Native Land Court is fully warranted by these provisions; and, though it may be true that some of the formalities prescribed were not strictly followed, it appears to me that it was competent to the parties interested to waive these formalities. If so, it is unquestionable that they have been waived."

What does that show? I say, if my friend cannot invoke sections 27 to 32, where is the statutory provision to alter the award of the Court of the 3rd December? There is no statutory provision unless these sections can be invoked, and if they can be invoked, then the decision of the Supreme Court by Mr. Justice Williams and Mr. Justice Conolly is that unless the sections are strictly complied with the Court acted without jurisdiction. Now, we find that the original Court, with the Assessor, did not concur in this, and we find that Kemp was assenting to something as trustee on his own behalf.

*Mr. Justice Denniston*: That would be a breach of trust.

*Sir R. Stout*: There was not only a breach of trust, but my friend invoked the Supreme Court rules with regard to a trustee and a *cestuis que trustent*. When there is a conflict between the *cestuis que trustent* and trustee, the trustee cannot represent the *cestuis que trustent*. If the Court finds there is a conflict between his right and the *cestuis que trustent* the order is not binding if the *cestuis que trustent* brings the matter before the Court. Therefore my friend's illustration is of no value, because this was a conflict between the trustees and the *cestuis que trustent* as to Block 11: so that that argument will not help him. Unless my friend can invoke the statutory authority of the Act of 1880 to vary the plans there was no power to make Section 14 go west of the railway-line; and, if there was no power, can it be said that these orders, made without jurisdiction, are an estoppel on the Native Appellate Court? (Rule 65, page 26, of the English cases). That is the point. How can these orders, if made without jurisdiction, be an estoppel on the Native Appellate Court to prevent them inquiring into the nature of this land? This is a statutory right of amendment, and the Court of Appeal has decided that if the statute has not been complied with, then the Court has proceeded without jurisdiction. How can these orders, made by Judge Wilson in August, 1887, be binding on people who were the original owners of the land if the orders were made without jurisdiction? How can they bind the Appellate Court, and prevent the Court from getting at the truth of the set of facts, trust or no trust? My friend sets up these orders of Judge Wilson and says, "They block your way to find out whether there was a trust or no trust." He says you cannot say these orders are invalid, even if contrary to the statute, yet these orders are an estoppel; and, although the Supreme Court