

might set them aside by *certiorari*, yet they block the Appellate Court. Now, I submit, the Court has all the powers of the Supreme Court, and if they found the orders to be invalid there is nothing to prevent them finding that they are invalid. Therefore, in dealing with this question the Court should support the Appellate Court, and say that, if these orders are invalid, the Appellate Court has the right to say so, and they must answer the question of law on the assumption that they must answer on the question of facts.

*The Chief Justice*: There is an amending Act of 1881, which allows the certificate to be under the signature of the Judge, without the Assessor.

*Mr. Bell*: That is the Native Land Division Act of 1882.

*Sir R. Stout*: The Native Land Division Act says that the Judge alone can sign orders of partition; but that is not the point. That is merely a mode of certifying to what has happened in the Court. That is in subsection (2).

*The Chief Justice*: That negatives your idea that you want an Assessor.

*Sir R. Stout*: No, I submit it does not. Your Honour will see also that section 10 assumes that all the owners shall be in Court. That is an application for the jurisdiction of the Court, just the same as in a partition amongst Europeans. One person may apply for a partition, but would the Supreme Court deal with the partition in the absence of those interested in the land? Now I come to the questions. I submit that the question of law the Court asks to be dealt with must be answered. The first question is, "Does not section 56 of 'The Native Land Court Act, 1880,' require the assent to a voluntary arrangement under that section of every one of the owners, registered or otherwise, to render it effective, and was it not imperative that the requirements of that section should have been fully complied with prior to giving effect to any such arrangement?" I submit the answer to that must be "Yes." It is assumed that there are to be trustees appointed under section 10 of the Native Land Division Act. The second question is most confusing, because it has mixed up five or six things in one question; but I submit that its meaning is this: If the consent of all is necessary, can a voluntary arrangement made by a few bind those not parties to it? I submit not, and that the answer should be that the proceeding of the Judge could not vest the land in Kemp.

*Mr. Justice Conolly*: There might be a thousand persons interested in this land, and a considerable number might be old and bedridden, yet you say they must all be present.

*Sir R. Stout*: Yes, to a voluntary arrangement. They must consent by writing or by their agents.

*Mr. Justice Conolly*: There is nothing about writing. I read it literally.

*Sir R. Stout*: I read it literally also, and I say all must be represented.

*Mr. Justice Conolly*: Supposing the arrangement had been reduced to writing, and one of the persons died in the interval, I understand by your argument that would be fatal.

*Sir R. Stout*: Possibly an agreement come to amongst the owners might bind them if he agreed before death. I do not think there are many voluntary arrangements.

*Mr. Justice Conolly*: I do not see how, if it is read literally, it is possible to get one.

*Sir R. Stout*: I have been in Native Courts where partitions were asked for, and found that voluntary arrangements were simply impossible, and if made were done by bribing some of the bigger chiefs. Passing to question 3, I submit that is really citing, in effect, the decision of the Chief Justice in the case of Warena Hunia and Kemp.

*Mr. Bell*: That is a catch question.

*Sir R. Stout*: I do not know why my friend should call it a "catch question." There is the question, and the Court is asked to answer it. Question 4 is the same point really involved in the second question. As to question 4a, I submit that if there was a valid order on the 25th November of a specific piece of land that neither Court had power to upset that decision, and the result is that the order made on the 3rd December is invalid. The suggestion was to give 2,400 acres to the descendants of Te Whatanui. The minute shows that this Block 3 was set aside to carry out a prior agreement made between Kemp and Donald McLean in 1874. Now, if Kemp got this land and Section 9 to fulfil that agreement, and if one was sufficient to fulfil the agreement, then he must hold that other land for the owners.

*The Chief Justice*: If it was the intention of the Court—of Kemp and all the parties—to vest this land absolutely in Kemp, still the result would be that it was held by him as trustee.

*Sir R. Stout*: I do not admit that.

*The Chief Justice*: Supposing Judge Wilson intended to give Kemp a third, and it had been agreed to by all the parties. Assume that; still the accident of this omission would render the Court *functus officio*, and the result would be that this man would hold it subject to the *cestuis que trustent*.

*Sir R. Stout*: The Appellate Court might hold that, although there was a *cestuis que trustent* in the block, Kemp might be made a sole *cestui que trust*. There is a resulting trust for himself and others. The Court has to deal with Block 11 and Block 14, and might decide that Kemp is entitled to Blocks 14 and 11. What we want is to get the Court to say the Appellate Court shall have power to try these things on their merits. We are not raising the technical point; it is the other side who are raising these technical points. My friend raises the technical point that the orders block the Court from doing justice between the parties.

*Mr. Bell*: I must say that that is a misstatement.

*Sir R. Stout*: I say he is raising these orders as an estoppel on us to prevent us and the Appellate Court getting at the merits of the question; and when he says we are raising technical points, I say we are raising them as a reply to his estoppel, in order that the Appellate Court may deal with this matter free from methods of procedure and technical points of any kind. As to question 6, I do not think it matters when the cancellation was done. It seems to me that the Court could have proceeded or not, and does not affect the jurisdiction. On question 7 the answer must be in accordance with the decision of the Court of Appeal, as stated by Mr. Justice Williams and