

Mr. Justice Conolly in the case I have already referred to, and that would mean that if a survey was not made in compliance with sections 27 to 32 there would be no jurisdiction, and if not invoked, there is no statutory power to have this plan amended at all. That answers 7, 8, 9, and 10, and, practically, 11 too, because all deal with the question of the plan; and I submit the answer should be that there is no statutory power to amend the plans except the statutory power conferred by sections 27 to 32, and, if invoked, they must be strictly complied with; and I submit that the Court never consented to this order, and that the parties interested had no notice, and gave no consent. As to question 12, I submit that that is so. I submit that, these orders being invalid, the only thing is to issue a certificate under the 17th section, and the Native Appellate Court can then proceed under the Horowhenua Block Act to find out who are the true owners. As to question 13, I submit that if the orders are set aside, then it is clear there has been no partition, and, if there has been no partition, the registered owners are entitled to have a partition made now, as if these orders had not been made. And I submit also that even though the orders stood, still, on the investigation of title which the Equitable Owners Act gives them the right to, they would have the right to go into all the circumstances, and not merely to inquire as to whether Judge Wilson intended a certain thing or not. The only other thing I wish to mention is the one point as to the case my friend relies on as to the meaning of question 13. Winiata and Donnelly's case, I submit, is a strong authority for us, because it shows that the decision of even the Chief Judge in the Native Land Court that he had jurisdiction does not make an order valid. He made an order, and the Supreme Court said, "He has wrongly interpreted the statute, and we shall set that order aside"; and if the Supreme Court can say that in that case, it has a right to say that these orders are invalid, and cannot be binding on the Appellate Court.

*Mr. Stafford*: I have nothing to add, your Honours, to what my friend, Sir Robert Stout, has said.

*Mr. Baldwin*: One point arises on my friend Mr. Bell's opening on the facts. As to the fifth fact, he states that the order was made on the 25th November to Kemp, and that nobody has suggested it was an intended trust for the registered owners. It was either intended, he says, for Kemp or for Kemp as a trustee for the Ngatiraukawa. But I submit that it was impliedly intended by the registered owners that whichever of these two alternative blocks the descendants of Te Whatanui did not accept should be held in trust for the registered owners.

*Mr. Justice Denniston*: You say they were simply put in his hand as a stakeholder.

*Mr. Baldwin*: Yes; and that was the intention in the minds of the tribe.

*Mr. Bell*: I cannot permit that to go in.

*Mr. Justice Conolly*: You must admit that there is nothing to show the intention of the original owners.

*Mr. Baldwin*: I took down the note of what my friend said very carefully, and he said that nobody had suggested that it was intended as a trust for the registered owners. Now, we do contend that it was intended as a trust for the registered owners. The second point I want to dwell upon is my friend's rendering or construction of the decision in *Hapuku v. Smith*. The decision was perfectly clear that if the Judge and the Assessor acted judicially, and affirmed that they acted judicially, this Court will not deny that they acted with jurisdiction in making a certain partition, although it is alleged by other persons that they made the partition by a valid voluntary arrangement. If made with discretion, they had the right, even if the absence of writing made the voluntary arrangement inoperative. I do not propose to go seriatim through the questions. With regard to the first question, I submit that where all the owners are ascertained a voluntary arrangement amongst the Natives themselves must mean amongst all those Natives, and, when it is said that the case could be decided if this voluntary arrangement was between the same parties, the "same parties" must refer to the persons who are actually parties to the voluntary arrangement. By Mr. Bell's contention, if there were five owners in a block, and two appeared and suggested to the Court that nineteen-twentieths of the block should be given to them, that is to bind the three absentees. As to the necessity for recording this voluntary arrangement, your Honours will see that it is only such arrangements within the terms of the statute that had to be given effect to—that is to say, arrangements in pursuance of the previous part of the section. The first part of the section states that the Court is to record such arrangement, and the second part is that the Court can give effect to such arrangement when recorded. With regard to the second question, I submit that the answer to that, from my point of view, can be expressed in this way: that where a Court, imagining or being led to believe that it is acting in pursuance of a voluntary arrangement which never exists, makes certain orders imagining that it is carrying out that voluntary arrangement, that those orders should not bind—that they are not operative. I would cite the authority *Blythe v. Preece* (9, New Zealand Law Reports). As to question 3, I submit that the authorities are clear. "It shall be lawful." There must be discretion. (*Regina v. Adamson*, 1, Q.B. Division, page 206; 4, Best and Smith, 959). If the Court exercises no judicial discretion the orders are a nullity—that is to say that if this was a voluntary arrangement the Court should record and give effect to it. There is also the case of the Bishop of London, in 24, Q.B. Division. I submit it has been found as a fact, and also as a conclusion of law, by the Appellate Court, whose findings are final and conclusive, that the Judge did act administratively. What they say in paragraph 3 is this: "The Judge being of opinion that he had no power to depart from the terms of the alleged voluntary arrangement in any respect whatsoever."

*The Chief Justice*: Is it not that it means, when he says he acted administratively, that he did not consider it any part of his business?

*Mr. Baldwin*: Apparently that is what he meant—that he had nothing at all to do with it when the parties said they agreed to this. I submit he mistook his functions. On the seventh question the instances quoted by Mr. Bell seem to me the very strongest argument against the