

position he was taking up. As I understand him, because there may be cases in a partition where it may be impossible to obtain the assent of all the parties, therefore the section should not be compiled with. Now, I submit that it is just because these sections are designed to operate as judicial proceedings by the Court so as to estop the whole world that the Act made them compulsory. Take this case of Mr. Bell's—that it was land that had never been adjudicated upon at all. Surely there is no one who can bind the parties interested, because there is no one entitled. And that was the very reason why this section was enacted. "If," he says, "Kemp and Hunia could not bind these people, it would be impossible to carry out the previous intention, because they were the only people who could represent them"; and I say it was just for that very reason that parties could not be found always, that the sections were enacted, so that a Court proceeding should interpose and estop any subsequent complaint. And, turning to the case of Te Waha-o-te-Marangai, it is decided that the formalities spoken of there may be regarded as the carrying-out of the section of 1880. Mr. Justice Edwards said that was material, the carrying-out of these requirements; but the giving of certain specified notice might be waived if all the parties were present and agreed to the plan.

Mr. Bell: I only propose to address two observations to your Honours. First, with regard to the case, 15, N.Z. Law Reports, page 171, cited by Sir Robert Stout, and referred to by Mr. Baldwin. It is a case very much in point. It is in the March number. The point is this: Mr. Justice Edwards's dealing with the case similar to that of Warena Hunia and Kemp. He decides, rightly or wrongly, that the requirements of sections 26 to 32 can be waived. With regard to the other observation I wish to make, Sir Robert Stout dealt with this word "confirmation" in the minute. He says—and I will not answer his argument, but it does seem to be of some importance—that the confirmation of that order was in his own name. What I am pointing out to the Court is that "confirmation" cannot mean "confirmation of a trust in favour of the descendants of Te Whatanui," whatever it means, and for the simple reason that on the 1st December the Court had declared a trust of other land. Sir Robert Stout says it must mean the re-establishment of that order. What we say is this: that the term "confirmation" is a matter there which requires interpretation, just as the term "in his own name" requires interpretation. Then, that brings in the question of what was meant by the man who said he was going to confirm the orders in his own name, and that can be known to one person and to one person only. The Assessor is not a Judge; he is there to assist the Court.

The Chief Justice: Could the Judge act against the Assessor?

Mr. Bell: Certainly he can, and the very point was put in one of these cases. In some matters the Assessor's concurrence is essential.

Mr. Justice Denniston: Who signs the order of the Court—the partition order?

Mr. Bell: The Judge.

Mr. Justice Denniston: Does the Assessor?

Mr. Bell: No; I do not think the Assessor's signature is required to anything now, although it is necessary he should sit on the bench. In some matters his concurrence is expressly required, and in other matters he sits there, and is simply an Assessor.

Sir R. Stout: We rely on the section of the Act of 1880.

The Chief Justice: We will take time to consider the judgment.

JUDGMENT OF HIS HONOUR THE CHIEF JUSTICE.

Before answering in detail the questions submitted by the Native Appellate Court, it is, I think, desirable that the opinion I have formed upon the governing question in the case should be stated.

The most important point is: What was the jurisdiction intended to be conferred on the Appellate Court by the 4th section of "The Horowhenua Block Act, 1896," with regard to certain portions of land therein specified, and particularly a portion of land therein spoken of as "Division 14"? It is not in contest that this portion of land and the other portions or divisions were once parts of a larger block, known as the Horowhenua Block, the title to which had in 1874 been so far ascertained that a certificate had been issued under the 17th section of the Act of 1867, with the name therein of Major Kemp alone, but as to which there were a large number of registered owners; that on a subdivision of this land in 1886 by the Native Land Court that Court had by several orders purported to subdivide the whole block into fourteen subdivisions, of which Division 14 was one; and that a Land Transfer title was in due course given for some or all of the subdivisions, but certainly for Division 14. Now, on the one hand it is contended that when the Legislature, by "The Horowhenua Block Act, 1896," declared null and void the Land Transfer certificate of Division 14, and enacted that "The Native Equitable Owners Act, 1886," should for the purposes of the Horowhenua Block Act be revived, and that to enable *cestui que trusts* to become certificated owners the Native Equitable Owners Act should apply amongst others to Division 14, it was intended by the Legislature that the Court should, as to this Division 14, first ascertain whether, on the subdivision of the block and the creation of Division 14 as one of the divisions, it was intended at the subdivision proceedings, either by the Court or by the registered owners, as evidenced by their proceedings in Court, that Division 14 should be taken by Major Kemp, subject to some, and, if so, what, trust, or, at any rate, not as sole beneficial owner.

On the other hand, it was contended that it did not appear from the Horowhenua Block Act that the jurisdiction by that Act given to the Native Appellate Court was so limited, but that it was intended by that Act that the Appellate Court should ascertain whether or not the so-called trust in favour of registered owners which had been created over the whole block by reason of the certificate under the 17th section of the Act of 1867, granted in 1874, with the name therein of Kemp alone, and the 145 registered owners, had, as to that part of the block described as Division 14, been