

*Mr. Bell* : Some of this land had been sold.

*Sir R. Stout* : Yes ; 10 or 11 acres had been sold ; but most of the block was in this position : the whole of it was mortgaged, but not sold. I submit the Court must look at what this legislation was. The whole of the rest of the 1,100 acres could have been brought under this section, and there was no reason for asking for a re-enactment of the Equitable Owners Act or the Horowhenua Block Act.

*The Chief Justice* : Is there any clause saving the rights of lessees or mortgagees ?

*Sir R. Stout* : No, your Honour. This was really re-enacting in a form the Equitable Owners Act of 1886. To show the effect of "The Horowhenua Block Act, 1896," one must look at the Horowhenua Block Act of 1895, and that Act says this :—

"The lands comprised in the several certificates of title issued under the provisions of the Land Transfer Act in respect of divisions numbered six, nine, eleven, twelve, and fourteen of the said block are hereby declared to be absolutely inalienable in any manner howsoever until after the last day of next session of Parliament ; and no proceeding whatever in connection with the said lands, or any of them, or with any dispute or question which has arisen in relation thereto, or any dealings therewith, shall be commenced or continued in any Court whatsoever so long as such lands shall remain inalienable as aforesaid."

And then it goes on to say,—

"The Governor in Council shall appoint a Royal Commission to inquire into the circumstances connected with the sales or dispositions by the Natives of any or the whole of the blocks contained in the Horowhenua Block, comprising originally about fifty thousand acres, and as to the purchase-money paid for the same, and as to what trusts, if any, the same respectively were subject to ; and the costs and expenses of such Commission shall be charged upon such of the lands as the Commission may determine."

Then came the Royal Commission, and after that the Act of 1896, the preamble to which recites the issue of the Royal Commission, and goes on to say, towards the end of the preamble,—and this is what I rely on,—

"And whereas the report of the said Royal Commission and the minutes of the evidence taken thereby are published in parliamentary paper G.—2 of the year 1896 : And whereas it is expedient to as far as practicable give effect to the recommendations in the said report set out."

Now, that preamble incorporates the recommendations of the Royal Commission—and I submit that by the authority of cases, as well as by our Interpretation Act, the preamble is part of the Act—the preamble of the Horowhenua Block Act of 1896 deals with the report of the Royal Commission and the minutes of evidence showing what the findings of the Commission are, and then the preamble proceeds to say that the statute is to carry out the report of the Commission, and the report of the Commission was that Block 14 was a block held in trust by Kemp.

*Mr. Justice Denniston* : Where is the statement that the recommendations of the Royal Commission assume the existence of a trust ?

*Sir R. Stout* : It is not called a recommendation in the report of the Commission ; but in their recommendation dealing with Block 14 they state in their report that this is trust land, and say that there must be an inquiry to see whether the leases given by Kemp are valid.

*Mr. Justice Denniston* : The recitals in the Act do not assume the accuracy of the Commission's findings. What it says is that a separate Commission has reported. You say that the recommendations of the Commission contained an assumption of Kemp's trusteeship. It says the object of this Act is to give effect to certain recommendations.

*Sir R. Stout* : They could only test the one question—whether the transfers by Kemp of the lease and the transfer of the small bit of land to Sir Walter Buller were valid.

*Mr. Justice Denniston* : But where is the recommendation which assumes the trust ?

*Sir R. Stout* : The proof is this : that proceedings are to be initiated on behalf of the tribe to test the validity of the leases and transfer given by Kemp to Sir Walter Buller.

*Mr. Justice Denniston* : The recommendation assumes the tribal ownership.

*Sir R. Stout* : Yes ; and the finding is explicit that the land was tribal land, and did not belong to Kemp himself, and they recommend proceedings to be taken to test the validity of the transfers and leases given by Kemp to Sir Walter Buller.

*Mr. Justice Denniston* : You say that the recommendation assumes that Kemp is a trustee as to Block 14.

*Sir R. Stout* : Yes ; and that really there is no question of trust for the Appellate Court is practically concluded by the Act, and has not to find a trust at all. That is the only way the Act can be read ; and the only reason I have dealt with the preamble is simply to show this : that the preamble, in the words of one of the Judges, is a key to unlock the statute ; and if I can show that all the sections can only be reconciled by this assumption that a trust is declared in the section itself, I prove my contention. I submit that is the way he has interpreted the Act. Why is he a claimant ?

*Mr. Bell* : The certificate is set aside.

*Sir R. Stout* : Why should the certificate be set aside if there was a question of trust or no trust—if the Native Appellate Court had to answer the question. Does a trust exist ? But I submit this statute has set aside the certificate. I shall show that this is treated as trust land, and I say the Equitable Owners Act is incorporated by section 3. Then, section 4 goes on to say,—

"To enable *cestuis que trustent* to become certificated owners of certain portions of the said block the provisions of the said Act, excepting section eighteen, 'The Native Land Court Acts Amendment Act, 1889,' shall, notwithstanding anything in the said Act or any other Act now in force to the contrary, apply to Divisions Six, Eleven (less portion known as the State Farm at Levin, containing one thousand five hundred acres, as hereinafter dealt with), Twelve, and Fourteen of the said block, as the said divisions are more particularly described in the First Schedule hereto."