

with evidence at all. In the Courts at Home they take the shorthand notes instead of the Judge's notes, but it is a pure rule of practice. The Judges still take their notes, according to the practice, as to what really happens in the Court below. But it is not a question of evidence at all, but a question of practice. Judge Townsend said a Judge's notes were no better than anybody else's notes, and Judge Talford said a Judge's notes stood in no other position than anybody else's notes (Regina and Child).

Mr. Justice Williams : They could not be put in as evidence.

The Chief Justice : Mr. Bell limited his contention to what the Court itself did.

Sir R. Stout : As the Native Land Court is a Court of record it is bound to keep minutes of its proceedings. If its minutes of proceedings conflict with the Judge's notes, and the Court amended that note, the Judge must amend the proceedings with his notes. Now, in this case he had no notes. The case I quote on this point is 5 "Cox's Criminal Cases," page 203. What has happened in this case is this : The Appellate Court says that the Judge's recollection contradicts the Court on one point. Are they to accept his recollection ? I submit the answer should be that they should not. The point is this, dealing with this question of recollection : According to the minutes of the Court the Court sat with one Assessor ; then the constitution of the Court was changed, and another Assessor came in. The evidence is that on the 25th November this block was called Block 3, and that appeared to be so from the plan, because Block 3 is on the plan. They did not have the plan before, but they have found the plan, and that shows that Block 3 appears on the original plan. Now, the position is this : It appears, then, from the maps and from the records of the Court that this block was set aside for Kemp, as a trustee, on the 25th November, as Block 3. Now, we will start with that. Secondly, it appears from the minutes that what the previous Court had done on the 25th November was confirmed on the 3rd December. What was confirmed ? The trusteeship was confirmed. That appears from the Court's minutes.

Mr. Bell : No.

Sir R. Stout : I do not say the word "trusteeship" was mentioned, but I say the block was given to Kemp for a special purpose on the 25th, and that is undisputed.

Mr. Justice Denniston : There is no record of that on the minutes.

Sir R. Stout : It was a trust when it was first given to Kemp. That the other side do not dispute. Now, when did he cease to be a trustee ? There is nothing on the face of the records to show when he ceased to be a trustee, but, on the contrary, there is the word "confirmed," and how is it explained ?

Mr. Justice Denniston : Suppose it only amounted to a confirmation of the allotment to Kemp ?

Sir R. Stout : Then, the onus rests upon them. Once a mortgage, always a mortgage ; once a trust, always a trust. They must show that the trust was divested.

Mr. Justice Denniston : There is no suggestion to give both these pieces of land ?

Sir R. Stout : No, your Honour, but they had the option to take either. Question 13 says,—
"It is contended on behalf of the persons who assert that Meiha Keepa is only a trustee for Subdivision 14 that the foregoing minute supports their contention that the order made on the 3rd December is merely a confirmatory one of the order for the same parcel of land the order for which was pronounced and entered on record on the 25th November as No. 3, and then vested in Meiha Keepa to Rangihwinui for the descendants of Te Whatanui, in fulfilment of the arrangement between himself and Sir Donald McLean."

The fact is that Te Whatanui's people are now at loggerheads ; they say they have been wrongfully excluded. Their choice was not completed until three years afterwards.

Mr. Justice Denniston : Whether or not the choice was binding is another matter.

Sir R. Stout : I am putting it like this : Suppose there is evidence of it, can the Court find it ? That has been the point I am arguing. I say the Court can find, on the other hand, that it was a trust. I am only arguing on this point to show that the voluntary arrangement meant the conveyance, and that it lacked validity because the registered owners were not there ; some were dead. Secondly, those who did consent to Kemp getting Block 14 (and we assume it was consented to), then it was the block bounded to the west of the railway-line, and Block 14 has been put above Block 11, and that was illegal and without jurisdiction. And, lastly, I say that, as this Block 3 had been made a trust block, there is no evidence that that block was given to Kemp beneficially afterwards ; or I will put it that there was evidence, and argue it both ways.

Mr. Justice Denniston : Supposing it was clear that there was an exchange, then we get rid of the question of the *cestuis que trustent* as to Block 14.

Sir R. Stout : No, because there is the other piece across the railway-line. Of course, if it was contended that the exchange was assented to, I say it was not a voluntary arrangement unless it was assented to by the whole tribe.

Mr. Justice Denniston : The basis of the legislation was that Kemp had this land really given to him, not beneficially, but for the benefit of his tribe, and that was the whole reason why he was attacked ; not that he had got the wrong piece of land.

Sir R. Stout : The position of the matter is this : If the minute-books stand, they contradict Judge Wilson on the main point. He says this block was never before him at all until December. That is the main point, and they contradict themselves on that main point. The next point I want to refer to is the question of how the Court is to deal, under the Equitable Owners Act, with the trust at all. In Native matters I submit the Court has to find out the title. Now, in dealing with this matter, what would the Court have to do ? They would have the right to trace this land down from the time when it was Native land. When it was found to be Native land, what was the first finding of the Court ? That the whole of this block of 52,000 acres is tribal land. It was found that Kemp was chief, and that the land was wholly given to him as trustee. Then, the Court would next find that there was a partition of this land, and then that at this partition the people entitled