

necessary to show that the certificates of the Court are invalid, this is ancillary to the question of a trust, and therefore it is immaterial to us, because we say the Appellate Court can utilise every power it possesses to find out whether there was a trust or not. Let us look at the Equitable Owners Act. There are far more extended powers under the Horowhenua Block Act. In the Equitable Owners Act the Court is not confined to the existence of a trust. No trust might have been created, and yet under the Equitable Owners Act people may be declared beneficiaries. The words are, "According to the result of such inquiry the Court may declare that no such trust exists; or, if it finds that any such trust does or was intended to exist, then it may declare who are the persons beneficially entitled."

*Mr. Bell*: "Was intended" must mean some trust not intended. It depends upon the meaning of the word "exist."

*The Chief Justice*: There are three terms: "Trust does exist," "Trust does not exist," "Trust was intended." Mr. Bell is ready to accept—

*Sir R. Stout*: Very well; if he accepts it it obviously means the Court made no declaration, because "was intended to exist" must mean intended to exist by the owners; that is a conveyance—a voluntary arrangement. The Court did not declare Block 11 was a trust. The Supreme Court went behind the certificate of the Court, and I submit the Appellate Court had all the powers of the Supreme Court in its Native jurisdiction. Who intended it to exist? It must be the registered owners. Then, we have to come to this position: "Who were the registered owners?" the Appellate Court would have to ask, and "What did the registered owners do?" Suppose they had not appeared before the Court at all, could it be said that Kemp had a right to get this land free of trust? He was already a grantor of the land in a sense, and remained a grantor, or his trusteeship altered. It is admitted that he was, unless the trusteeship was altered; and who could alter it? I therefore submit that under this head the Appellate Court has a right to inquire into all the dealings, and say whether this trust was put an end to by the owners of the land—that is, the beneficiaries and registered owners; and I submit that is all we ask; and all these inquiries and questions put by the Appellate Court lead to that. I admit that some are of little importance, but they are all leading up to one point. Have we evidence that these grantors gave up their trust? Did they intend to do so? The onus lies on them to show that the trust was actually destroyed and intended to be destroyed. How can they prove that? Only by dealing with the investigation before the Court, and showing that this voluntary arrangement was a voluntary arrangement that was come to by all the owners, or by all the persons interested; and if all the persons interested did not assent to Kemp getting the land, then the trust is not destroyed. That also has a bearing on this question of the map and the alteration of the boundaries. I should call the giving of a different block of land—nearly 600 acres on the western side of the railway-line, outside Block 11—which the Supreme Court has found was a trust, land given by one trustee to another.

*Mr. Bell*: Of course, we contend that Block 14 is defined by the order, the same as with Block 11—that is, Block 11 as shown on the amended plan.

*Sir R. Stout*: The position is this: Block 11 as defined by the Court was all the land up to the railway-line. How was the alteration made? It was not made by the Court, because the Assessor was no party to it. What the Supreme Court declared was, that at the time the Court made the order—before the plan was settled at all—Block 11 was ordered to be given to Kemp and Hunia, and went to them as trustees. That is what the Court has found. The words mean, "All assent on the plan." Why is "assent" put there? It is treated on the plan as something given up by them. Had they any authority to give it up? Surely the Court has a right to inquire into that. I submit that is conclusive that this question must be inquired into. This question should be answered for another reason: The proceeding in the Native Court is *in rem*, but once the title is ascertained, once it becomes an English title, as it has become, then these proceedings are *inter parties*, and not *in rem*; and, if so, how can the decree of the Court be valid if the parties are not before the Court? If the parties were present it would bind them. I say now that, if the Court had given a judicial decision that the parties were present—although they were not—and so got jurisdiction, or came to any other decision, the Court would be bound to give *certiorari* against them. I submit the parties were not before the Court, and the Appellate Court has to decide how the original trust was got rid of. The only other point is this: that the Court should answer these questions for this purpose: The Appellate Court sit to hear a claim for this block, but the Appellate Court's jurisdiction is not confined to hearing the claim. It may have a motion of *certiorari* raised before it.

*Mr. Justice Denniston*: Then it can answer suitable questions.

*Sir R. Stout*: But your Honour will see that it will save trouble and expense if the questions now put before the Court are dealt with. It will be better than to have further questions and further litigation. The Appellate Court requires certain things for its guidance. I submit the Court should give the Appellate Court guidance as to its power under the Acts I have referred to.

*Mr. Justice Conolly*: Do I understand you to say that the Court should answer questions which may be important to the Appellate Court in some other matters, although they have nothing to do with the matter under consideration?

*Sir R. Stout*: No, I do not put it in that way; but my friend says this question is not to be asked because of the nature or form of the question in the Court below. The Horowhenua Block Act gives the Appellate Court all the powers of the Supreme Court.

*Mr. Justice Denniston*: Mr. Bell's contention is that the Horowhenua Block Act limits the whole of the inquiry in such a way as to render an answer to certain questions unnecessary.

*Sir R. Stout*: My friend tries to limit it on the ground that, as this is a mere application for a piece of land called trust land, or intended to be trust land, therefore the Court is limited, and is concluded by the certificate issued by the Land Court in 1886.

*Mr. Justice Denniston*: I do not understand that to be Mr. Bell's contention. Under the Equitable Owners Act you are limited to that.