Mr. Bell: I may be personally misunderstood. Sir Robert Stout seems to suggest that I am opposing the answers to the questions. I am seeking an answer to the Appellate Court that the matters are irrelevant. I said in the Court that I would not put obstacles in the way of answering the questions, but that I would contend the matters were irrelevant. I must not be put personally in the position of seeming to oppose Sir Robert Stout's request to the Court that an answer should be given to those questions which are relevant.

Sir R. Stout: That is my argument to the Court. My friend wants to say that the Appellate Court is limited simply to this question under the Equitable Owners Act. I say, if it be contended that it is limited to that because the application was simply to define the interests of Block 14, I reply that the Appellate Court may set aside the certificate on *certiorari*, and, secondly, the Court will look at the powers of the Court from that point of view, and therefore they are not merely confined to the Equitable Owners Act. My friend brought that forward as if it was conclusive. I have pointed out that if the authorities had thought this Act was sufficient they need not have had a special Act passed at all, because all the Government need have done was to give the jurisdiction under the Act of 1894.

Mr. Bell: But that would not have affected Sir Walter Buller's freehold.

Sir R. Stout: We are not arguing about Sir Walter Buller's land at all; we are dealing with the Natives. I submit, that being so, the reason for the passing of the Act was surely to give greater powers than existed under the Equitable Owners Act, and under section 14 of the Act of 1894.

The Chief Justice: There was no question put to the Court raising the question.

Mr. Bell: Yes; question 17.

The Chief Justice: What we understand by Mr. Bell's contention is that, whatever power a Native would have had in 1886, after the passing of the Equitable Owners Act, to have gone to the Native Land Court and said, "I claim that there was a trust or an intended trust with regard to this particular block of land," and whatever power the Court would have had with regard to the Native complaining, the Appellate Court is to have the same powers with regard to the Horowhenua Block.

Sir R. Stout: And no other powers?

The Chief Justice: Power for the purpose of carrying out its decision, and, supposing they found there was a trust, for the purpose of giving a title. The main object was to give the Appellate Court the power of ascertaining whether there was a trust or an intended trust with regard to this particular piece of land. The trust, Mr. Bell says, was not a trust by construction, but practically an intended trust.

Mr. Bell: Question 16 and question 17 together were intended to raise that question in the argumentative form. The Appellate Court has put in each an argumentative question.

Sir R. Stout: I do not contest the point—that is, assuming that the Court holds that it overrules my contention that the Act declares this to be trust land, and the people are *cestuis que trustent*, as the Act says. I submit that the Act declares this trust land, and the cancellation of the certificates, and the dealings with Sir Walter Buller's land, all show that this is trust land. But, assuming that the Court is against me in the construction of the statute, I submit that the Appellate Court was invested with far greater powers than the Native Court would have had under the Equitable Owners Act, and that the powers granted to it under the sections of the Act to which I have referred give it power to question the validity of the proceedings in the Court of 1886; and if it appears now that the Court of 1886, sitting as a Court, acted without jurisdiction, and therefore could not destroy the existing trust, then the Appellate Court has now the right to say so, and to say that the trust connected with this land has never been destroyed. And that is the power my friend denies. He says, in effect, that the Native Appellate Court may find by evidence—suppose it is proved conclusively to the Court—that a trust existed in this land from 1873 to 1886; the Land Court had no jurisdiction to destroy that trust through the absence of parties and the alteration of the plan, in violation of the Act. Then, I say the Appellate Court has power to say that the trust was never destroyed, and my friend says they have no power to do so. That is the point. If the Horowhenua Block Act did not declare this was trust land, then it gave the Appellate Court ample power to ascertain it. My friend is raising a technical point against the Court doing justice as between the parties.

Mr. Bell: That is not so.

Sir R. Stout: I say the Act was meant to find out what was the truth concerning this block, and my friend's argument is to prevent the Court having jurisdiction to find out the truth.

Mr. Stafford: I do not propose to add anything to my friend Sir Robert Stout's argument.

Mr. Baldwin: Before addressing myself to what I assume is the main question in this case—the question which my friend Mr. Bell has put forward—I would just like to submit to your Honours a few remarks with regard to the reception of evidence in contravention of the Judge's recollection. I have only got this to say: that this, so far as I know and have been able to find out, is the first case in the Native Land Court in which the position Mr. Bell wishes to take up has been assumed. As your Honours know, the very point arose in the question of the Horowhenua Block 11—the case of Warena Hunia against Kemp. Mr. Justice Edwards (who was then counsel) appeared for Major Kemp. He called as a witness to give evidence to this very question Judge Wilson—as to what the Court intended to do. Judge Wilson was cross-examined there, and no objection was made to it. The matter was referred to by the Chief Justice in his judgment, and your Honour weighed the evidence of Judge Wilson on the point as against the evidence of the other witnesses. On page 79, vol. 14, it says,—

"I have not yet referred specifically to the evidence of Mr. Wilson, who acted as Judge at the Court. Unfortunately, he had destroyed the notes he had taken at the hearing of the application for subdivision, but he is clear as to the impression produced upon his mind by what took place in his presence, and that this impression is that the persons interested in consenting to the order to