"At the time when the minutes for the orders Nos. 11 and 14 were made, on the 1st and 3rd December, 1886, respectively, the purport of the order made for No. 11 was for the whole of the land not otherwise appropriated between the sea and the railway, as shown upon the plan forwarded to the Survey Department, comprising an approximate area of 15,207 acres. The position of No. 14 was originally fixed to the eastward of the railway-line, but on the survey being made it was found that the area to the eastward of the railway-line was insufficient by 589 acres to provide for the whole of the quantity required; an alteration was therefore made which resulted in 589 acres 1 rood 38 perches being taken out of No. 11 to make up the quantity required for No. 14. The area of No. 11, found on survey, now comprises 14,975 acres."

There were two small pieces of land which had been appropriated, and it is minuted "Purported to be a voluntary arrangement of the parties." All we are complaining of is that the Native Land Court, well knowing our interest in the matter, without giving us any opportunity of objecting, took away 600 acres of our land—part of the lake—and handed it over to Kemp. If this Court holds that the order for No. 14 can be quashed on the ground of mistake, it will be open for the Appellate Court to treat it as if not made, and to consider whether or not, on a proper consideration of the evidence, Major Kemp alone should have the piece of land to the westward of the railway-line, or whether Kemp with the other persons should have it. My friend Sir Robert Stout points out that question 9 specifically deals with that. I am not dealing with that point specifically now, but that is another case where we are entitled to go behind the order.

Mr. Justice Denniston: What about No. 6 under the Act?

Mr. Baldwin: We say it is a trust section; but if it were contended by Kemp that this was his own land under the order it would be open to the persons interested in this to suggest——

Mr. Justice Denniston: It was meant that 600 acres should come out of somewhere.

Mr. Baldwin: I submit it might have come out in two different ways. It might have been provided for by a rateable abatement of all the sections to the eastward of the railway-line, or it might have come out—and properly so—of No. 12.

Mr. Justice Denniston: You rely upon a different boundary having been mentioned—the railway-line. It must have been a fixture.

Mr. Baldwin: Yes, your Honour.

Mr. Justice Denniston: But it was not quite a fixture?

Mr. Baldwin: It was the railway-line, because we find that substantially the whole of the land lies to the eastward. The tribe suffers in a piece of land in which it is not particularly interested.

Mr. Justice Denniston: It is all trust land. The same objection would arise all round. You say 1,200 acres must be found: the same principle would apply, for you would have to trench upon trust property in some way.

Mr. Baldwin: If the people had been consulted they would probably have said, "That is the land we gave to you." The point I am dealing with is that the fact that it comes out of the very best of the land, and is given to one of the trustees, does not leave it open to this trustee to complain. Your Honours will remember that the tribe thought they had reserved all the land to the westward, and I say, if they had given anything at all, it was the land to the eastward of the railway-line. No. 12 is a "balance block," and, being so, what hardship can there be in the land coming out of that, if it is only a "balance block"? That is practically the whole of my argument on this point: that whether we can show that this order was not an order of the Court on the ground that it is made without jurisdiction, or that the Court was deceived in making it, or for any other reason, I submit that the order will not stand in the way of an intended trust which appeared to be given effect to in previous proceedings. And in that connection I would like shortly to refer to what your Honours put to me this morning—that perhaps the Court would have been entitled to go behind the certificate of 1867. I submit that they would have been so entitled if any Native could have shown that it was intended at the time—namely, 1873—that the land was to be held in trust for them as well as for others. That would not apply generally under the Equitable Owners Act, because it would require special legislation to bring any land-titles under that section within the provisions of the Equitable Owners Act. The decision in the Piripiri Block seems to have shown that land under section 17 does not come within the Equitable Owners Act. It is only when that Act is made to apply to it, as in this case, that the point would arise. Another point is this: Dealing with the Horowhenua Block Act, my friend Mr. Bell's contention is this (as I understand it): that this order made by Judge Wilson to Kemp bars—that is to say, unless we can show that under that order he is intended to be a trustee, that we are bound by that order. I submit that, if it can be shown outside the order that Kemp is only the legal owner, and that persons are beneficially entitled, then, under section 14 of the Horowhenua Block Act, this Court is entitled to disregard that order. Section 14 of the Act says, "All Orders in Council, judgments, decrees, or orders whatsoever now or at any time hereafter affecting the said block shall, so far as they conflict with the provisions of this Act, be void and of no effect." I submit the governing words in this Horowhenua Block Act are the opening words in section 4—"To enable *cestuis que trustent* to become certificated owners of certain portions of the said block." For that purpose the Equitable Owners Act is re-enacted, and for that purpose the Court gets wide powers under the Native Land Court Act, and if any order conflicts with it that order must be disregarded—that is to say, where the order acts, as it were, as an estoppel, and prevents the Appellate Court getting at the truth of the matter from the real beneficial owners of the land.

Mr. Justice Denniston: They are to treat them as non-existent, so far as they are contrary to its opinions—that is to say, if the Court finds them in the way it may ignore them?

Mr. Baldwin: Yes, your Honour. That is to say, substantial justice in the way of enabling beneficial owners to become entitled. The only other point is just one observation I wish to make on the construction of section 15. As Sir Robert Stout has dealt with that very fully I do not pro-