

circumstances, that I had to consider whether he was compellable to state what appeared to be the fact, although he had not stated it in the case.

*Mr. Bell*: I can quite understand that he could be compelled to say what was or what was not the fact.

*The Chief Justice*: I believe in the end we avoided the difficulty.

*Mr. Bell*: I say, in *Rex v. Grant*, that Lord Denman was as wrong as he could be. There are two counsel and the shorthand-writer against him; but Lord Denman's recollection was just the other way. It was quite possible and probable that Lord Denman was absolutely wrong, and that the point ought to have been admitted. But go further and say that half a dozen other shorthand-writers had all agreed upon the point, still the principle is that the oath ought not to be admitted if the Judge's recollection is clear. And I submit there is greater reason for applying the rule here, where you may have a Judge of the Native Land Court dealing with another Judge of the Native Land Court, for a difficulty might occur which certainly would not occur in the Supreme Court, and it is quite obvious that that is so.

*The Chief Justice*: The Magistrate in the case I mention, in giving his verdict, used expressions which tended to show he had taken wrong matter into consideration. That was the ground for a new trial. The case was stated, and he would not state it in any other way. He left out that part of the verdict, and, as the minute did not show that it was part of the verdict, but was only a general summary, it was contended by the other side that he had stated as part of his verdict and had taken into account a wrong matter, and that, as it was a matter of law, he could not take it into account in giving his verdict. That was the point. There was a mandamus applied for, and affidavits put in on both sides, and in the end I think it was settled.

*Mr. Bell*: He might be compelled to say, possibly, what he had said; but, supposing he reports to the Court that he did not use the words alleged, is the Court going to determine then upon the affidavits against the Magistrate? That is the very illustration of the position, and I submit the Court ought not to do so.

*The Chief Justice*: Why not?

*Mr. Bell*: Because of the recent ruling I have suggested.

*The Chief Justice*: The difficulty is that there is such a rule.

*Mr. Bell*: But it was the ground upon which the case of *Rex v. Grant* was decided. However, I will just leave it there. The question will arise again some day or other. In the case of *Coles and Bullman*, reported in the *Law Journal*, the Court decided that the use of affidavits to correct the Secondary's notes could not be allowed. It is a new point, but, I submit, a point of very considerable importance, and, although it has been decided without argument in *Hapuku v. Smith*, still, I submit, it is still open to the Supreme Court to settle. The observations in that case show how reluctant the Court would be to be driven to act upon evidence contravening the memory of the Judge. Surely it is much more convenient and proper to do as, we submit, the cases show that the Courts of England do—decide that if you have the direction of the Judge you cannot contravene it.

*Sir R. Stout*: The direction may be wrong. Under Rule 58 three cases are referred to in the notes, and in those cases it appears that the Court is not confined to the Judge's notes.

*Mr. Bell*: I understand that the argument is now closed on questions 14, 14A, 15, 16, and 17, inclusive. Question 17, of course, requires a definitive reply apart from the general answer.

*The Chief Justice*: The question is put in this way: "Is not the Appellate Court, in coming to such a decision, entitled to disregard any of the proceedings in the Court of 1886?" In saying, "entitled to disregard," they mean "not bound by."

*Mr. Bell*: What they mean is this: "Are we not, under section 15 of the *Horowhenua Block Act*, absolutely at large, in exercising all our jurisdiction, to roam over the whole ground?"

*Sir R. Stout*: We do not say that is so.

*Mr. Baldwin*: I may say that I am responsible for that question. With regard to all these questions, a great many were submitted by counsel on both sides. The words mean "not estopped."

*The Chief Justice*: They mean, notwithstanding the evidence of Judge Wilson.

*Mr. Bell*: That is not so. They began by question No. 16: "Is it not a matter for decision by the Appellate Court, under 'The *Horowhenua Block Act*, 1896,' whether it was validly agreed to at or before the subdivision or Court of 1886 by the persons whose consent was necessary that Major Kemp should be the sole owner of the piece of land now *Horowhenua No. 14*; and is not the Appellate Court, in coming to such decision, entitled to disregard any of the proceedings in the Court of 1886, and any matters or things in pursuance thereof?"

What we put to the Court is that the answer to question 17, whatever happens to the others, is "No."

*The Chief Justice*: We may be able to give some answers which may not be very satisfactory to the Court.

*Mr. Bell*: Surely we have a right to say the Court is bound by an answer which your Honours give. The answer, either for or against us, at all events, should be such as to bind the Court.

*The Chief Justice*: Of course.

*Mr. Bell*: Question 18 is a question on which the argument is not closed. I understand that questions 14 to 17 inclusive are closed so far as argument is concerned. Now I begin the argument on question 18. That is a very simple question, on which I need not delay your Honours, and is properly put. It is a question arising on the last words of section 4 of the *Horowhenua Block Act*. It says,—

"Can the Court, exercising jurisdiction under section 4 of 'The *Horowhenua Block Act*, 1896,' limit the interest of, or wholly omit from an order made, any person, unless it finds such person to have been a trustee, and, while a trustee, to have acted to the prejudice of the interests of the other owners? Are the concluding six words of section 4 to be construed as limited to reasons *ejusdem generis* with those specifically stated?"