The question is whether the words "unless it finds such person to have been a trustee," govern what follows. It is suggested that they might exclude a man who had not been found to be a trustee. There are two questions put. The first question is, "Can it exclude or limit a person unless it finds such person to have been a trustee?" They ask, Can they omit from an order any person unless they find such person to have been a trustee, and, while a trustee, to have acted to the prejudice of the interests of the other owners? Must they not mean this: "having been found a trustee, has, during his trusteeship"? The possible interpretation is that a man, because he has been found to be a trustee of one block, may be robbed of his interest in another block of which he is not a trustee. I cannot offer to help the Court in the interpretation of this question. I think it means that if he is found to be a trustee, and is guilty of a breach of duty as a trustee——

The Chief Justice: If found not to be a trustee in Block 14, but a trustee in some other block.

Mr. Bell: I should think the simplest interpretation would be, if he is found to be a trustee in Block 14, they might leave him out of his beneficial interest—they might leave him out if he were found to be guilty of something in the nature of a breach of trust. To read this section as giving the Court a right to take away the man's land because they find that in another of these blocks he has been guilty of a breach of trust is surely not intended. We submit that it is not intended that his interest can be confiscated as to Block 14 if he is found to be guilty of a breach of trust in Block 11. If found to be a trustee in Block 14, then his interest can be limited in any way the Court may think fit.

FRIDAY, 5TH NOVEMBER, 1897.

Mr. Bell: I ask leave of the Court to cite a case which is a very important one in the Supreme Court, and I also ask leave of the Court to mention a case which I found last night relating to the Judge Wilson point. It is the case of Chatterton and Kaye (3, Appeal Cases, 483), and I wish to refer to Lord O'Hagan's statement on page 496. Briefly, it is this: The case was tried before Lord Coleridge without a jury. On the terms of his finding, judgment might have been so entered. He made a finding, and judgment was entered; then a motion was made, not for a new trial, but to enter the verdict, and Lord Coleridge sat in the Court of Common Pleas Division and stated to the Court what the meaning of his finding was. Now, it was not questioned that, if he had not been a Judge sitting to determine what was the meaning of his finding, he could have done so. The argument was this: that he was sitting to enter judgment on his verdict, and he, as Judge, had no right to say anything to his colleagues on the matter. Lord O'Hagan says, "Suppose the case had been tried by the Judge of another Court under similar circumstances, and he had reported to the Common Pleas on a new trial motion the reasons of its finding, they must have been accepted in their integrity and at their true legal value, and your Lordships must have so accepted them. And how is the matter altered because Lord Coleridge is the Chief Justice of the Court and reports directly to it by word of mouth?" Then, this point was, as your Honour suggested to me, really determined by this Court in the case Winiata against Donnelly (14, New Zealand Law Reports, Court of Appeal), in the judgment of the Court of Appeal delivered by Mr. Justice Denniston, at page 227. This is the case which I propose to cite on the other point, and which I omitted from my argument only by accident, in consequence of finding myself in reply. Your Honours will recollect what took place in that case. There was an error about the position of Pokopoko. The Court intended to draw the line at a particular place, but Pokopoko lay to the north, whereas they supposed it to lie to the south, and Winiata was excluded. The two Judges who decided the question originally, and drew the line, had never been asked what they meant, and the Court below say this on that point, at page 227: "It is extremely difficult to arrive from outside evidence at any person's intention. The question of what the Court actually intended was one in case of dispute really to be determined by the Judges, but during the ten years during which this litigation has lasted we are not aware of steps having been taken at any of the numerous judicial investigations on the subject to obtain from either of these gentlemen a categorical answer to a question as to whether they did intend to exclude Pokopoko settlement as distinguished from Pokopoko forest or district." We submit, your Honours, that that is a judgment by this Court; that a question of the intention of Judges who made an order in the Native Land Court is to be determined by the Judges—that they ought to be asked the question; and we submit it means that, if the question is asked, that is to be determined by the Judges themselves. Now, did the Court of Appeal mean that if these gentlemen had been asked the question and had made an affidavit—the only way, I suppose, it could have been brought before this Court on *certiorari*—were to be cross-examined, and asked as to their antecedents, and treated as ordinary witnesses? We submit that if the Judges in this case had been asked the question it means that they could not have been cross-examined as ordinary witnesses. This puts the Native Land Court Judge in the same position as a superior Judge, and different to that of a Magistrate, as suggested by the Chief Justices; and the judgment in the case cited is really in our favour.

Mr. Justice Denniston: What the Court really said was that in this particular case the question at issue was what was in the minds of the Judges.

Mr. Bell: I think your Honour will find that, on consideration of the circumstances, as they must be considered to show a parallel between the case quoted and the present, how impossible it is to put this view forward as a reference to this particular case. The whole question was whether the Court had or had not adopted a particular course gathered from the minutes, plans, and Acts; and affidavit after affidavit was filed, and then the Court of Appeal say, "Why did you not ask the Judges? They are the persons who are really concerned in the matter." I submit it was not so intended here, and that in the Native Land Court still more the same principle should apply as between Judge and Judge as applies in this Court as between Judge and Judge.