Whatanui and refused by them, and No. 9 given them instead. In examining him before the Royal Commission I read to him the Judge's note, by Sir James Prendergast, of his evidence before the Supreme Court. I will read that note now from the record of the Royal Commission (page 79, question 428): "Somewhere about this time Mr. Lewis," &c. [Read accordingly.] When I read over this very plain statement to Mr. McDonald he could not, of course, contradict it, though he made some very prolonged and rather disingenuous attempts to water it down—attempts which will afford excellent matter for cross-examination if Mr. McDonald should be called now. He tried to say that he was not sure that No. 9 was ever definitely given to the descendants of Te Whatanui; but, in the first place, this is irrelevant so long as they refused No. 14, and, in the second place, it contradicts Mr. McDonald's statements in the Supreme Court and the minutes, the accuracy of which he accepted, and is rather absurd considering that the descendants of Te Whatanui took up their residence on No. 9 immediately, and have ever since been disputing among themselves about its division. This was all the evidence we had before the Royal Commission in favour of the trust, except, of course, the evidence of various Natives who said that No. 14 belonged to them, but did not attempt to deny that the opposite was expressly said in Court in 1886, in Judge Wilson's hearing, when No. 14 was allotted. Indeed, curiously enough, no one at all was called by the counter-claimants to speak on this point.

I will now conclude my address with one general remark. This case does not depend on Native evidence. There is no getting away from what was said and done in Court, and these points, I am glad to say, do not depend on Native evidence. I shall call one or two leading chiefs to say, on behalf of the great majority of the tribe, that they all understood that No. 14 was Kemp's share, and acquiesced in his getting it. But even this class of Native evidence is irrelevant. Judge Wilson stated before the Royal Commission, and no one attempted to deny it, that when No. 14 was allotted it was stated in Court that it was Kemp's individual share; and that he challenged with especial care, and no one objected. The Natives cannot unsay that: they have consented, once for all, to Kemp having No. 14. There is another class of Native evidence with which I shall not trouble the Court at all. I shall not, of course, offer any evidence that Kemp is entitled, according to Native custom, to Subdivision 14. Kemp was given a freehold title to No. 14 by the partition of 1886, and the question is whether that freehold title is or is not trammelled with a trust. Even at the partition of 1886 no claimant for any of the subdivisions gave evidence proving his title according to Native custom to the share he claimed. Such evidence would have been irrelevant, as the partition was by voluntary arrangement; and it would, I submit, be doubly irrelevant now.

ARGUMENT BY MR. H. D. BELL.

Part I.

1. There has been a very considerable conflict of evidence as to which block of 1,200 acres, 9 or 14, was the subject-matter of the intended order of the 25th November, and upon this point, if the Court had to determine it, it is not greatly aided by the recollection of the Judge who heard the case, or by the minutes of the Court; and it must be very difficult, after so many years, to discriminate between the evidence and to decide which of the various accounts is to be accepted. It may well be that each person is honestly giving his recollection of what took place and what was intended, and, if that be so, it is surely almost impossible safely to decide which memory to rely upon.

2. But it is submitted that it is immaterial and unnecessary for the Court to come to any conclusion upon this point, for if the minutes of the 1st and the 3rd December, and the recollection of Judge Wilson, are accepted as a guide, and if the recollection of Judge Wilson as to what took place on the 2nd December is also accepted as a guide, then it is wholly immaterial which block was intended to be dealt with on the 25th.

3. For, assume that what was intended to be dealt with on the 25th was Block 14, Ohau, then, if Judge Wilson is to be believed in his statement as to his reason for making the order of the 1st December—viz., that Mr. Lewis had notified to the Court the approval of the Government to that Block 9 for the descendants of Te Whatanui—it follows that on the 1st December, when an order for No. 9 was made in favour of Kemp upon trust for the descendants of Te Whatanui, the order of the 25th November became nugatory, and it became necessary to make a fresh order with regard to Block 14. And, on the other hand, if we assume that what was dealt with on the 25th was Block 9, then the order of the 1st December confirmed the order of the 25th November, and, as before, leaves Block 14 still to be dealt with by order of the Native Land Court.

4. Is the Court, then, to be guided by the recollection of Judge Wilson, which is clear and unshaken, with regard to the proceedings of the 1st, 2nd, and 3rd December? I contend that there is the plainest authority for the proposition that evidence cannot be accepted to contravene that recollection; and I will mention some of them. Most of them are collected in the New Zealand case of White *v.* McKellar (1 N.Z. Jur. 157), which determines that, first of all, the Judge's notes are conclusive, but that the Judge's recollection can be used to supply any omission in those notes, and the Judge's recollection may also be used to explain any ambiguity. The case of Reg. *v.* Grant (3 Nev. & Man.) decides that when the Judge is clear in his recollection upon a point, and reports his recollection to the Court, it is not open to the Court to receive evidence to contravene that report.

5. The importance of strict adhesion to this rule has been recognised, as I show consistently, in the English Courts. It is, to say the least, of no less importance that it should be strictly adhered to in the Native Land Court, as, in the nature of things, what can there be to guide the Native Land Court or the Supreme Court, where the minutes are ambiguous or the terms of an