the block to the Ngatiraukawa; and it is said that you cannot do that, and that the original decision is cast-iron. (See *In re* the Murimotu Block, and Mr. Justice Richmond's decision in Maloney *v.* McDonnell, 7, N.Z. Law Reports, page 1.) The whole thing is so treated in the best way the parties can do it, and nothing is finally done until the orders are sealed. Nothing is conclusive except the sealed order. Supposing they could not make a fresh allotment, what are they to do? The absurd result is this: Suppose the Court were to answer "No" to that question, that it was cast-iron and fixed, then Kemp would be a trustee for Ngatiraukawa. They put it that the result was that the Court was *functus officio* on the 25th November, and made another order, and by that result Ngatiraukawa get altogether 2,400 acres, not according to the intention of the Court, but according to some abstruse principle of law. They point out "If not, were not both parcels appropriated to the same purpose, and did not Kemp, in whose favour they were ordered, become clothed with a fiduciary capacity in respect of both for the purpose referred to,"—namely, the purpose of the 25th November and the purpose of the 1st December. That is their meaning of *functus officio*. With regard to questions 5 and 6, I submit they should be taken together, and that the simple answer "No" will answer them. I do not know that my friends seriously contest those questions.

Mr. Baldwin: I understand Sir Robert Stout does not intend to argue it, and I do not.

Mr. Bell: Passing to section 7, which is a question argued by Mr. Baldwin yesterday, I think questions 7, 8, and 9 may be taken together. I should like, if the Court sees no objection, to put my answers to these questions and number them, and then I can get the answers on your Honours' minds without taking up your time unduly. First, as to its not being essential on partition. The point here is that the sections of the Native Land Court Act of 1880 which are referred to here are sections relating not to division but to original investigation, and the Land Division Act of 1882, in section 3, empowers but does not require the Court to proceed in the manner prescribed by the Native Land Court Act of 1880. The case of the Mangaohane Block (9, N.Z. Law Reports), referred to by Sir Robert Stout and myself, was a case of original investigation, and marks the reason why the rule should be absolute in the investigation of title and not necessarily absolute upon partition. And the reason why is this: The outside boundaries of a block are matters affecting not only the persons called before the Court, but also the persons outside owning the adjoining lands; and in the case of the Mangaohane Block, Winiata, a person not a party to the investigation of Mangaohane, and others not found to be interested, were affected by the alteration of boundary which took in a piece of land which was intended to be a portion of the Awarua Block, and which was taken in by a proceeding which was not in any way *inter partes*. The Court should not proceed under the Act of 1880 if satisfied that the parties are satisfied with the altered boundaries. The second point is that in this case, and by the Horowhenua Block Act, the inquiry is limited to the piece of land forming Division 14 as on the boundary altered, and also the Block 11 as defined in the plan on the order. I have already pointed out to the Court the fact that the lands which are to be the subject of inquiry are defined in the Horowhenua Block Act, and are in the schedule. They are the existing division. It is not a trust of land. Taking Block 11, for instance: it is suggested that the Court should read this piece of land into Block 11, and make a trust of it; and, conversely, it is suggested that you are to read part of Block 6 into Block 14. That is the effect of the argument. The question, it is submitted, is not what might have been the case had Block 14 been elsewhere. On this point I wish to suggest this contention to the Court: Supposing the grievances were that Block 14 had been left as shown on the sketch-plan, but had only 800 acres. The Court did two things—it awarded 1,200 acres. If Ngatiraukawa had not got 1,200 acres there would have been a clear breach of the agreement. It awarded 1,200 acres, and it is a question of acreage, and also a question of position. Supposing the acreage had not been made up by the position being shifted, as was done here, would not that have been an equal ground, and even a more serious ground, of complaint on behalf of the persons concerned if Ngatiraukawa had only got 800 acres instead of the 1,200 allotted to them? Somehow or other, as between the award of acreage and the award of position, the boundaries must be arrived at. Supposing the Court finds Kemp to be trustee of the registered owners of this block, how is it going to replace the acreage of which the *cestuis que trustent* are short? Assume that portion of it is to go into Block 11, and Kemp is declared to be a trustee, they are entitled to the land west of the railway-line and 1,200 acres east of the railway-line. Where are they going to get the 1,200 acres? If it be a trust, where is the acreage to be made up? To this single issue the other side will answer, "We shall be content if the Court gives us back Block 11." But that is not an answer. I am assuming that Kemp is a trustee. Where is the land to come from? Out of No. 6? That would be equally a breach of trust, because No. 6 was given to the persons who had been left out of the original investigation. It is equally a trust block. Where, then, are you going to get the 1,200 acres? In the same way, when there has been an award of area, and a hesitating sketch award of boundary, you must arrive at some solution between them; and, if the Court had arrived at this solution, we submit it has crystallized it, and the statute has admitted the crystallization, and the Court has, on the assumption that Blocks 11 and 14 were duly defined as to area and lakes by the orders, the sole question being, Is there any trust affecting the land included in these orders, the land being located and defined? The next answer is that Kemp and Hunia, in writing, approved the alteration. They were the only persons known to the Native Land Court as having control of the block. In this Court, trustees by our rules represent their *cestuis que trustent*. Why not in the Native Land Court? It is no use talking about advertisements, of plans, and so on; if some of the people are dead—an advertisement will not reach them. The widest circulation does not reach a dead Maori. On the argument used that there is no validity in the consent of Kemp and Hunia signing the plans, the Court could not have issued its orders at all unless it had proceeded to advertise, and in some way reach the dead men under sections 27 to 32 referred to. That is to say, the Court, because they