Sir R. Stout: I might point out that this is exactly in the teeth of what Kemp's counsel contended in the Court below.

Mr. Bell: I was Kemp's counsel in the Court below.

Sir R. Stout: I am referring to Sir Walter Buller's argument.

Mr. Bell: Sir Walter Buller was the agent for Kemp, but I was appearing for Kemp. I only appeared for one day, and I am presenting to this Court what I presented then. They at first refused to state their case at all, because I expressed the opinion that the questions were all irrelevant except one or two, with which I propose to deal. There is no doubt that the Court treated us, as this Court has treated us, with consideration, and they finally agreed to put Question 15. They consented to the Court determining whether, in fact, their jurisdiction is not confined to the one question under the Equitable Owners Act. Now I turn to the question which we submit is the only question they had to deal with, and shall submit to the Court the answers we contend for as the answers in this special case. The Court is aware of this fact, viz.: that the Horowhenua Block itself contains 52,000 acres. It was subdivided in 1886, and every question which is stated, and which I have been putting before the Court, applies not only to Block 14, but also to every other subdivision of the Horowhenua Block. The Appellate Court says the Legislature has not cancelled the certificates of title in these particular blocks for the purpose only of this Act, and therefore this land is put back to the certificate of 1867, and consequently what we have to do is to ascertain whether the Court properly ascertained the owners in 1886. That is what the Appellate Court says. They admit that if the Court of 1886 proceeded regularly, then they would have proceeded to ascertain what the intention was; but that if the Court of 1886 did not inquire into every one of the provisions of the Act, then they did not proceed regularly. The Appellate Court, after hearing counsel, does not give counsel so much information as the Judges of the Supreme Court do. They say,—

"They proceeded to subdivide the aforesaid block by giving effect to an alleged voluntary arrangement of the registered owners assembled at Palmerston North by virtue of section 56 of 'The Native Land Court Act, 1880'; but such arrangement was not reduced into form, or put into writing" (it is not required by the Act of 1880 that it should). "It was not formally recorded by the Court in manner provided, or recorded at all otherwise than by the Court recording the orders it made giving effect to the said arrangement, the Judge being of opinion that he had no power to depart from the terms of the alleged voluntary arrangement in any respect whatsoever, or to exercise any judicial discretion as to giving effect to it or otherwise, and that he could only act administratively and in accordance with such opinions. The said Judge did purport merely to act administratively, and merely to record the terms of such alleged voluntary arrangement. A large number of the registered owners of the said block were also dead or absent at the time the said voluntary arrangement was made."

Now, the point that the Native Land Court refers to here is that the Natives met at Palmerston, came to an arrangement by themselves, and a number of the registered owners were dead or absent at the time, but all had notice. The proceedings were *in rem*, and the question is, then, whether such a matter is, as suggested, material to this case. It is a question whether, unless every man is there, anything in the nature of a voluntary arrangement can be made. We submit that question cannot arise, and for this reason: that, notwithstanding the form in which they put the question on this point—I refer to the last words in question 2—the Court, in the way it has stated the case, demonstrates that, in respect of the allotment of Block 14, the Judge did not act administratively, but acted judicially. They find this: that the Court sat on the 25th November first, and that they dealt with three blocks, one of which was No. 3; and they found subsequently that No. 3 was No. 14; that No. 3 was intended for the descendants of Te Whatanui, who were not certificated owners of the block, but mentioned in the documents set out [see Exhibit 6]—that is, the agreement made in 1874, twelve years before the Court sat. On the 25th November the Native Land Court, sitting with an Assessor named Mangakahia, dealt with the three blocks, one of which was called then No. 3, and which the Appellate Court now finds was subsequently Block 14, and awarded that to Kemp for the descendants of Te Whatanui, to enable the arrangement between Sir Donald McLean and Kemp to be carried out. It is indisputable, and therefore common ground, that on the 25th November Kemp was trustee of Block 14 for the descendants of Te Whatanui, and in pursuance of a voluntary arrangement. The intention of the Court, and of everybody else, is clear on the 25th November; there is no question about it at all. The Court finds that Kemp was a trustee for the purpose of the descendants of Te Whatanui. Then, this happens: The descendants of Te Whatanui object; the piece of land is not where they intended it to be. The Assessor becomes ill, and a new Court is constituted before the same Judge and a new Assessor (Kahui Kararehe), and "called over for the purpose of confirming them—the three orders made on the 25th November—the presiding Judge being under the impression, as the application was for a partition of the whole block, that it was necessary to commence *de novo* in consequence of the continuation of the proceedings being carried on with a new Assessor. The proceedings of the 25th November were therefore apparently treated on the 1st December as being of no avail"—I do not know exactly what that means—"but this view was not subsequently adhered to, as three of the orders of the Court were finally dated from the 25th November, and as of a Court constituted by Judge Wilson and Mangakahia as Assessor, although the parcel of land No. 9 (the subject of one of the orders so dated) was not dealt with or before the Native Land Court on that date. The Court on the 1st December confirmed two out of three of the orders previously made on the 25th November—viz., the order for the railway-line, and the order for the parcel comprising 4,000 acres to be sold to the Government—but postponed the confirmation of the order for the 1,200 acres on the southern side of the block at Ohau, intended for the descendants of Te Whatanui, in consequence of a fresh arrangement entered into out of Court during the interval that a similar area should be set apart in another locality for the same purpose. Accordingly, in pursuance of the said arrangement, and in conformity with the terms of the agreement between Sir