"The Court is of opinion that Judge Wilson is under a misapprehension as to the order in which the subdivisions were made, as it is sufficiently manifest from the minutes of the Court of the 25th November, coupled with other circumstances, that Subdivision 3, afterwards numbered 14, was the parcel of land before the Court on the 25th November, and not No. 9, which only came before the Court for the first time on the afternoon of the 1st December. As regards that part of Judge Wilson's explanation concerning the application made by Meiha Keepa on the 2nd December to have No. 14 allotted to him for himself, there is no entry in the minute-book in support of the circumstance, but this is not conclusive proof that no such application was made. The Court, however, makes no definite finding on the point as to whether No. 14 was at the Court of 1886 awarded to Meiha Keepa beneficially, as it is not necessary for this case to determine it. But they do ask in question 14A whether, where the evidence is conflicting and depends entirely on oral testimony, it is open to the Appellate Court to receive and consider evidence in contravention of Judge Wilson's distinct recollection with regard to any proceedings before him at the Court of 1886."

Of course, we ask the Court to proceed on legal principles here. We submit it is established that the very thing which happened here is the very thing the higher Courts refuse to allow: the Judge might be right or wrong, but his answer is final unless it contravenes the record. We show that on authority and principle. We submit there is direct authority, and it is consonant with principle. The Judge has been put into the box, cross-examined, and apparently his recollection is discredited; and the question is whether that can be allowed. We admit that this Court has on one occasion said it might be; but we say that the Court had not the authority before it, and we ask this Court to overrule that decision. What we say is that what is not allowed in the Supreme Court should not be allowed in the Native Land Court, and that if the Judge says his recollection is clear, then there is an end of the matter. The application was made on the 3rd December. The minute made is of the 3rd, and there is another application on the 2nd. They say there is no minute of the 2nd December, but the absence of the minute is not conclusive. On the 3rd December there is no doubt that the application is made, and Judge Wilson says positively that he did dispose of the block for Kemp himself absolutely, and not for others. They suggested that the Court had dealt with this on the 25th November, and was *functus officio*. The Court was dealing with partition under its jurisdiction, and it proceeded to make its oral decision.

Sir R. Stout: It is a new Court.

Mr. Bell: Then, a new Court had no right to award Block 9. It is almost impossible to conceive of a partition Court proceeding without completing its work. Block 14 was intended on the first day to go to A, and the trust failed, and it remained to be dealt with on the 3rd December; and dealt with it was; and we submit there was a clear jurisdiction to deal with it on the 3rd December.

Mr. Justice Denniston: Was confirmation necessary?

Mr. Bell: It is explained. The Judge says that Kemp used the word "whakatuturu." The order had been already made to Kemp.

Mr. Justice Denniston: Confirmation was not necessary, except on the theory that it was another Court?

Mr. Bell: Yes; and they went back and dated the orders 25th November. They got a new Assessor, and the question of whether it was a new Court was considered, and they proceeded afresh, and did not call up the order in relation to Block 14.

Mr. Justice Denniston: You say that it was the same order, and that the only difference was that it was a question of trust?

Mr. Bell: Yes; we say that is a reasonable view. Their first suggestion, as I have said, is ludicrous: that Kemp asked for a confirmation of the original order for Block 14. It is manifestly absurd, because on the 3rd December the descendants of Te Whatanui had got Block 9. There is a question as to the meaning of the word "whakatuturu," which is to be explained by recollection of the circumstances *aliunde*. The word "confirmation" is there, and the minute says "confirmation." Judge Wilson's evidence is called *aliunde*, to explain the meaning of the word, and that is conclusive. The Court says,—

"His explanation of the entry in the minute-book on the 3rd December—viz., 'Application from Meiha Keepa te Rangihiwinui for confirmation of that order'—is that the clerk probably obtained the term 'confirmation' through the interpreter in translating the word 'whakatuturu,' which was possibly used by Meiha Keepa in applying for an order for Section 14 in his own name, which it is alleged he had already applied for on the previous day."

Sir R. Stout: My point is that Judge Wilson did not say the word was used.

Mr. Bell: The word "confirmation" was used, and evidence is to be obtained of the meaning and intention of that, *aliunde*. It was the only question the Court had to ascertain—whether the order was an order to Kemp himself, or an order to Kemp as trustee; and this question—whether by an accident there is a trust by reason of some invalidity in the proceedings or some defect in the order—is not the question submitted to the Court in terms of the Equitable Owners Act. We submit that the Judge's recollection is exclusive; we do not suggest that a Judge's statement is to be accepted against the record. We admit that it cannot, though it is competent for a Court to amend its record in consequence of the Judge's view that its record is erroneous. The record can be amended by the recollection of the Judge, but the recollection of the Judge is not conclusive against the record. The line of authority on this point begins with a case in Croke's "Reports, Charles I.," page 338. I submit this point is of very great importance, whether a Judge who is quite clear upon the point can be contradicted and cross-examined and dealt with in this way. It is a question of principle, and of very great importance.

The Chief Justice: What is the meaning of the last sentence in paragraph 13?

Mr. Bell: They state that because they think it is a resulting trust. They assume that it is not their function to ascertain whether it was awarded beneficially to Kemp or not. They say by some