Sir R. Stout: Perhaps not; but suppose they remain, there is no certificate of the Native Land Court. I want to point out that these certificates are set aside, and I submit they would not have been set aside except in the assumption that this was trust land. That is proved by what takes place in subsection (*f*) of section 8 of the Horowhenua Block Act. It says,—

"A certificate of title for any portion of Division Fourteen aforesaid, of which any valid alienation in fee-simple had been made as aforesaid in the name of the person or persons entitled by virtue of such alienation: Provided that no certificate of title shall be issued except pursuant to final judgment in the proceedings hereinafter directed to be instituted by the Public Trustee."

And then in section 10 it says,—

"For the purpose of testing the validity of the alienation referred to in subsection (*f*) of section eight hereof, and also of all dealings the registration whereof has been cancelled as aforesaid, the Public Trustee is hereby directed and empowered to institute on behalf of the original registered owners of the said block, as set forth in the Second and Sixth Schedules hereto, or any of them, such proceedings in the Supreme Court at Wellington as may be necessary for that purpose within six months from the date of the passing of this Act."

That, I submit, is conclusive proof that the Legislature deemed this to be a trust block. If it is contended that the Appellate Court was to determine whether it was a trust or not, how can there be an action which had to be commenced within six months on behalf of the tribe to have this settled? The Appellate Court has not yet sat, and if you say we ought to commence the action, how could the action referred to here apply? I say the Legislature declared that the action should be begun by the Appellate Court to test the validity on behalf of the tribe, and that assumes that they are beneficiaries; and why determine this action before the Appellate Court states whether there is a trust or not? The original registered owners are the original tribe with the forty-eight added.

Mr. Justice Denniston: They are not read in as equivalent to the registered owners.

Sir R. Stout: Yes.

Mr. Justice Denniston: No. Section 4 gives the Court certain powers, but does not identify them.

Sir R. Stout: They are identified in section 10. I therefore submit that it cannot be said that, prior to the commencement of this action in the Supreme Court to test the validity of the dealings with this block, the Appellate Court had first to determine whether there was a trust or no trust. Now, the Chief Justice has practically decided that it was preliminary. That, again, I say, proves my contention that the Act treated this as trust land.

The Chief Justice: I do not know that I actually decided it. All I said was that there was reason to keep back the action.

Mr. Bell: We contended that Sir Walter Buller had two defences. He could show—(*a*) No trust; and (*b*) no notice. That was the position presented to your Honour.

Mr. Justice Denniston: You say, although the Act nowhere declares that this question of trusteeship has already been decided adversely to this man Kemp, still you can spell out in the Act a power for taking away this man's interest except as a trustee.

Sir R. Stout: I say, giving effect to the recommendations of the report of the Royal Commission is the object of the Act. They are based on the findings of the Court, and the findings and recommendations show that the Commission have found that the block is a trust block; and it is recommended, not that the Court should find a trust or no trust, but that the people beneficially interested should be found; and, secondly, whether this transfer to Sir Walter Buller was valid or not—that that should be tested.

Mr. Justice Denniston: Where are the recommendations?

Sir R. Stout: There is no word "recommendations"—that word is not used; but there are suggestions at the end of the report. Then, the Court will ask, what is the tribal estate? Well, it includes Block 14—the Commission have found it to include Block 14. They say that all the blocks except 1—9 and 10—are subject to a trust for the members of the tribe; and when they speak of "a tribal estate" they mean Block 14.

Mr. Justice Williams: The Act nowhere says that. The Legislature has assumed that there is a trust. Does that bind anybody?

Sir R. Stout: Yes, it does. That is the reason I have referred to the preamble of the Act, which, as a learned Judge has said, is the key to unlock the statute. If I can show that the whole of the sections of the Act can only be reconciled on the assumption of the existence of a trust, then the Court will be bound by it. If it is not a trust, then I say the Act is irreconcilable. It authorises the Public Trustee to issue certificates of title on behalf of the tribe; and how could he issue them on behalf of the tribe if they were not beneficiaries?

Mr. Justice Denniston: Kemp and Sir Walter Buller are out of the question as parties. Does it amount to anything more than that the Public Trustee, acting for the persons who claim to be beneficial owners, shall bring an action? There are three persons—the Public Trustee, Kemp, and Sir Walter Buller—and these three are excluded from bringing the action.

Sir R. Stout: The answer, I say, is conclusive as to that. The beneficial owners cannot bring an action until the trust is found. If the Act has assumed they are beneficiaries, then section 10 is readable and understandable. If the Act says the Appellate Court has to find the trust, then I submit the Act is unreadable. I say, reading the Act altogether, it can only be read on the one assumption—that the Legislature proceeded on the assumption that Kemp is a trustee, and that the land is tribal land, and then it declares who is to act for them. Otherwise, why not wait until the Appellate Court has decided whether there is a trust?

Mr. Justice Williams: Before this Act Kemp claimed a complete beneficial interest in this block; and you say the Act takes that away?

Sir R. Stout: Yes; and that the beneficial interest is not defined. He might be held to have the whole of it under the Equitable Owners Act. The quantum of his interest is not taken away, but other people are interested with him: that is all. That, I submit, is the only way the sections