the two were arranging for something in the nature of a trust and not a beneficial ownership to the two."

Your Honour weighs the evidence as against the evidence of other persons, and comes to the conclusion that Judge Wilson's evidence is entitled to greater credence. Then, Mr. Justice Denniston says, in delivering judgment in the Court of Appeal,—

". . . It is unnecessary to go in detail into the evidence, which has been fully dealt with by the Chief Justice. There is the clear evidence of Mr. Wilson, the Judge of the Court. The evidence of Mr. Macdonald, the main witness for the defence, is inconsistent with the idea of absolute beneficial ownership. Major Kemp admits the existence of the trust, and confirms the evidence of Mr. Wilson as to the circumstances under which the allotment was actually made. . . ."

Your Honour there, far from treating Judge Wilson's evidence as conclusive on the subject, went into the reasons for showing that Judge Wilson's evidence was to be believed, insomuch as the evidence of the other witnesses did not conflict. I submit that the principle contended for by Sir Robert Stout is the correct principle: Wnere a Judge, as an officer of the Court, makes a report to that Court, that that report cannot be contradicted; but when a Judge is tendered as a witness, and gives evidence, then he is subject to cross-examination the same as any other witness. That is all I propose to say with regard to that point. The main point seems to me to be the point raised by Mr. Bell in his argument, and, as I understand his argument, his contention was this: that the whole question is whether the Native Land Court sitting in 1886 intended, under the orders issued at that time, to grant the land in trust to Major Kemp.

The Chief Justice: Or had no intention to give the beneficial ownership to Kemp.

Mr. Baldwin: Yes, your Honour. My friend, Mr. Bell—I do not wish to misconceive him—as I conceive his argument, wishes this Court to compel the Appellate Court to take its stand upon that order made by Judge Wilson, and start its inquiries from that point; and, in connection with that, my friend has a little bit misrepresented—unintentionally, no doubt—the position taken up before the Appellate Court with regard to Block 14. It was never contended before the Appellate Court that the Court could disregard a subdivision of No. 14. But it was contended there that we could contravene Kemp's subdivision 14—it was contended that we could show that, although Kemp had land vested in him under that order in a sense, that although there was such an order, yet that other persons beside Kemp ought rightfully to have been included in the order. There was no suggestion that the order might be met by making Block 14 part of Block 11, but it was submitted that, inasmuch as what is part of Block 14 now was subject to a certain trust the same as Block 11, Kemp ought to hold that portion of 14, at any rate, upon that trust. Before proceeding to deal with the Equitable Owners Act and the Horowhenua Block Act I should like very shortly to mention—because I do not think enough stress has been laid upon it—the position of the title in 1886. The original title was a certificate under section 17 of the Act of 1867, and that was divided by the Native Land Court under the Act of 1882. The land was divided under the Land Division Act of 1882, and the orders issued under that Act had not the effect of commuting the title, or altering the title in any sense, but simply subdivided the land as Native land. The land after these orders were issued stood in exactly the same position as it stood under the certificate of 1867, so far as the fee-simple was concerned.

The Chief Justice: What did the Natives get under the Act of 1882?

Mr. Baldwin: It seems to be an extraordinary thing, but under the Act of 1882 it is not provided what they are to get.

The Chief Justice: What did they get?

Mr. Baldwin: They got a title, undoubtedly, but not under the order. They got a title under the Land Transfer certificate when it was granted.

The Chief Justice: What they got was an order of the Court under the Land Transfer title?

Mr. Baldwin: Yes. Prior to the issue of the certificate of title Kemp got nothing.

The Chief Justice: And what was the certificate of title on?

Mr. Baldwin: The Native Land Court order; but it has been decided that until the actual issue of the certificate he got nothing at all.

The Chief Justice: You say a certificate was issued, and then he got a right to a certificate for something.

Mr. Baldwin: Yes; but it made no change in the legal position of the land—the land remained Native land. On that order he was entitled to a certificate of title, but until a certificate of title was issued his title remained unchanged. But the point I wish to make is, that there has been no change in the title till up to the issue of the certificate.

The Chief Justice: When you are talking about Native-land matters it is best to say Land Transfer certificates.

Mr. Baldwin: I was referring to Land Transfer certificates. No title is vested under these orders in the person in whose favour they were made. I think your Honours will see that it is important in the construction of the Equitable Owners Act to refer to the case in 2, Court of Appeal Reports, page 49. Referring to the Crown Grant Act, on page 49, the judgment of the Court of Appeal, delivered by Judge Arney, is to this effect:—

"The leading provision to be considered—viz., the 26th section of 'The Crown Grants Act, 1866'—applies, it is said, only to Crown lands, and Native lands are not Crown lands. No doubt there is a sense in which Native lands are not Crown lands. The Crown is bound by them, by the common law of England, and by its own solemn engagements to a full recognition of Native proprietary right; whatever the extent of that right by established Native custom appears to be the Crown is bound to respect it. But the fullest measure of respect is consistent with the ascertaining of the technical doctrine that all title to land by English tenure must be derived from the Crown, this of necessity importing that the fee-simple of the territory of New Zealand is vested and resides in the Crown until it be parted with by grant from the Crown."