Mr. Justice Denniston: I do not think it was laid down as an abstract principle.

Mr. Bell: The Court applied in that case the principle we are contending for.

The Chief Justice: Is there nothing in the Act of 1880 or 1882 saying what the Clerk's duties are?

Mr. Bell: There is some statement, and your Honour refers to it, I think. There is one case in our Court as to the effect of these minutes—that of Mullooly *v.* Macdonald (7, N.Z. Law Reports, 1). As to the question of record, nothing is clearer than this: that the Court has control over its records. Your Honour dealt with the value of these minutes in your judgment in the Horowhenua case—Kemp against Hunia.

The Chief Justice: There are some cases which I have seen which lay down that if there is an officer whose business it is to make minutes those minutes are the best evidence, and have to be looked at.

Mr. Bell: We do not deny that they have to be looked at, and the minutes here are all in our favour. The entry of the 3rd December is entirely in our favour. If you have to go *aliunde* to explain, and the Judge's recollection is clear, then you cannot call evidence to contradict the evidence of the Judge.

Mr. Justice Denniston: You cannot get secondary evidence if the best evidence is available; you cannot get secondary evidence until you have exhausted the best.

The Chief Justice: Have you seen this case of Dews and Ryley? It was an action for false imprisonment against the Clerk of the Court. He had drawn up the committal in accordance with the minute which was made. It was contended that the committal was wrong because he did not commit at once. The Clerk drew up the warrant according to his own minute, and that was wrong, and the committal could not be made in those terms. In the action for false imprisonment the Judge was called, and said, "I did not make that order; I said it was to be committed forthwith." The Court said the Clerk's minute was the best evidence, and it could not look at anything else, although the Judge said he had said something else. Nobody suggested that the Judge's evidence was inadmissible for any other reason. Then, it appears that there is an earlier case—that of Urwin, in which Lord Bramwell says the Clerk's book is the best evidence.

Mr. Bell: We have not suggested that if there is a clear record the Judge's evidence would contravene the record; but, supposing you have to go *aliunde* to ascertain the meaning of an expression in the judgment, then we say the Judge only has to explain it. If the Judge does an act, and that act is questioned, I submit that he and no one else can say what the intention of that act is. My friend Mr. Baldwin cited the case Tully and Ngatatua, and Waata and Grice (2, Court of Appeal Cases, 177). The difficulty there was that the Crown grant was void. A certificate was revived, and the question was whether ejectment could be brought, and it was held that it could. Before I cite that case I do not wish to depart at all from the construction which I have suggested is the true construction of the words "intended trust" in the Equitable Owners Act; but I do not know whether this Court treats this matter as argued *inter partes* or from the Native Land Court. In looking up this matter last night I found that the effect of the interpretation which my friends seek is far wider than any one has hitherto anticipated. My friends, although the Act of 1886 was repealed by the Act of 1894, have themselves pointed out the fact that the Act has been revived and re-enacted in the Act of 1894, and I have subsection (10) of section 14. But besides that, this Court, under the Equitable Owners Act, has been turned loose upon the Poverty Bay district in "The Native Trusts and Claims Definition Act, 1893."

Sir R. Stout: Surely this is not open in reply?

Mr. Bell: No, but this is what I ask leave to refer to: What I am asking the Court to consider is that, if this judgment is a judgment *inter partes*, I can make a concession. If not, any concession I make cannot be taken into consideration. The contention is this: Supposing there are one hundred owners to a block held under the 17th section, and the Court makes an inquiry, ninety of these people out of the hundred cannot be affected by any irregularity in the investigation by the Court; but ten of them, because they happen to be registered owners, in consequence of the Court, on partition, having failed to do what the Act required them to do, remained trustees because of the original cloth which they wore. That is the argument. Supposing the Court should find that these ten people got too much, then the matter can be rectified; but, supposing the Court found that the ten got too little, then it cannot be rectified, and these ten only are the persons who could be disturbed by any reason which left them clothed with a trust in respect of their several individual allotments. They are still habited with the original trust by the certificate of 1867. So that I submit to the Court that the consequences are far wider than the present case. I turn to the case of Winiata *v.* Donnelly (14, N.Z. Law Reports, 209). This question arose on section 13 of the Act of 1889, and it is a section strictly analogous to the present, and not a section enabling the Judge to remedy errors as a Court under the Equitable Owners Act is entitled to discover trusts. This section 13 provides,—

"It shall be lawful for any person entitled to or claiming an interest in any land, who shall allege that his interest therein has been prejudicially affected by any error or omission committed or made in any decision or order of the Court, to apply at any time after the title of such land has been or shall hereafter become ascertained to the Chief Judge to inquire into the matters alleged in such application"—this is the Pokopoko dispute. "Such application shall be made in writing, and state specifically the grounds upon which it is made, and shall be verified by the statutory declaration of the person applying. Upon the receipt of any such application the Chief Judge may either—(1) By order under his hand dismiss the application; (2) hold an inquiry in open Court with the assistance of an Assessor; or (3) refer any question to a Judge sitting in open Court with an Assessor for his investigation and report. Public notice of the intention to hold an inquiry shall be given in the *Gazette* and *Kahiti;* and such further and other notice may be given as the Chief Justice may deem expedient. If it appear to the Chief Judge that the alleged error or omission has been committed or made, and that the interest in such land