

*Mr. Bell* contradicted this. If the judgment was against him (*Mr. Bell*) *Kemp* need not appear in the present case at all, and if the judgment was in his (*Mr. Bell's*) favour he wanted to plead *res judicata*.

*Sir Robert Stout* submitted that it was not a *res judicata* case, and contended that the special Court had been refused permission to deal with matters now before the present Court. To deal with the other judgment first would be wrong. It would further complicate this already complicated matter. The Court should hear this present application, and then say what should be done. As to *Major Kemp*, he was interested in the block in any case, either as trustee or owner.

*Mr. Baldwin*, following up *Sir Robert Stout's* argument, asserted that the matter now submitted to the Court by the present petition was entirely different from the other case.

*Mr. Bell* said he had evidently failed to make his contention plain to his learned friends, and he briefly recapitulated his points.

The Court adjourned for half an hour, and on resuming gave the following decision: "The Court has taken into consideration the application by *Mr. Bell* that before proceeding with the present matter the Court should deliver its judgment upon the question which was specially submitted to it under 'The Horowhenua Block Act, 1896'—viz., the question whether or not there was a trust intended by the Native Land Court in respect of the award to *Meiha Keepa te Rangihiwini* of Division 14 of the Horowhenua Block. The Court is prepared with its judgment on that question, and we are of opinion that it would be convenient that it should now be delivered. We decide, therefore, to adjourn the further hearing of this case to enable judgment to be given upon the question aforesaid."

Case adjourned till 2 p.m. of the 15th instant.

The Court adjourned till 2 p.m. of the 15th instant.

The Chief Judge then left the bench.

*Mr. Bell* applied for costs, as the decision was in favour of his client. *Mr. Baldwin* opposed the application. The Court reserved the question of costs.

*Mr. Bell* asked that order be sealed to-morrow. The Court consented.

The Court adjourned from time to time till the 18th instant.

#### JURY ROOM, SUPREME COURT BUILDINGS, MONDAY, 18TH APRIL, 1898.

The Court opened at 10.15 a.m.

Present: G. B. Davy, Esq., Chief Judge (presiding); A. Mackay, Esq., Judge; W. J. Butler, Esq., Judge; A. H. Mackay, Clerk.

Application of *Hetariki Matao* and another.

*Sir Robert Stout* and *Mr. Baldwin* appeared for the petitioners; *Mr. Stafford* and *Mr. Baldwin* for *Wirihana Tarewa* and *Rhipeti Tamaki*; and *Mr. H. D. Bell* and *Mr. A. P. Buller* for *Sir Walter Buller* and *Major Kemp*.

*Sir Robert Stout* informed the Court that since the case had last been before it one of the parties (*Major Kemp*) had died. Following the Supreme Court procedure, it would be necessary to ascertain the successors, and for them to appear in the case. Who these successors were was not known yet, therefore it was impossible for him to go on with the case until this information was obtained.

*Judge Mackay*: So far as is known *Kemp* had only one daughter.

*Sir Robert Stout*: Well, we can serve her or her successors.

*Judge Mackay*: That will take you some time.

*Mr. Bell*: If there is a will we will accept service for her.

*Chief Judge Davy* pointed out that this could not be ascertained until probate had been granted, which would take at least a month.

*Sir Robert Stout* concurred in this, and stated that that was his reason for asking for the adjournment. He asked also that no order under section 5 of the Horowhenua Block Act should be issued until the present case had been disposed of.

*Mr. Bell*: The order has been signed, sealed, and delivered to the Land Transfer Office.

*Sir Robert Stout* said he intended to submit in regard to this that there was no power for *Kemp* to apply for such an order. The only order that could be issued was on *cestuis que trusts*, and it had been decided that *Kemp's* had not been a *cestui que trust*.

*Mr. Bell* said that no doubt his friends would exhaust every remedy—they were bound to do that. The whole thing was persecution.

*Sir Robert Stout*: My friend can say nothing of persecution.

*Mr. Bell*: I have the right, and I cannot help saying it is persecution.

*Sir Robert Stout*: My friend has only himself to blame. He should have allowed the Supreme Court to deal with the matter when it came before it instead of blocking it.

*Mr. Bell*: My friend is making a statement entirely incorrect.

*Sir Robert Stout*: In what way?

*Mr. Bell*: Regarding the Supreme Court. I hope my friend will not make that statement again, as its repetition will cause a flat contradiction.

*Sir Robert Stout*: I will make it again.

*Chief Judge Davy*: What do you intend to do?

*Sir Robert Stout*: Well, the order has been issued.

*Chief Judge Davy*: An order has been issued! Have you seen the order?

*Sir Robert Stout*: No, I have not.

The order was here produced and consulted.

*Sir Robert Stout*: I do not think this is an order under section 5.

*Chief Judge Davy*: It is not intended as an order under section 5. It is merely an interlocutory order.