Mr. Bell: I must ask the Court's consideration of the issues as a whole first, down to No. 13 of the questions, and ask your Honours to turn to the last passage of paragraph 13. I submit that these questions are to be dealt with in a concrete and not in an abstract form. One finding has been given, and it is that finding I want to refer to for one moment. The last passage of paragraph 13 says, "The Court, however, makes no definite finding on the point as to whether No. 14 was, at the Court of 1896, awarded to Meiha Keepa beneficially, as it is not necessary for this case to determine it." And then, in question 13, they ask, "Is the whole or any part of the Subdivision 14 of the Horowhenua Block subject to a trust in consequence of the several circumstances detailed above, or any of them?" Now, the meaning is obvious. If it be a question of intention, we have not yet decided that; but what it asks the Court is, Does not a trust arise by operation of law? Are we not relieved from determining the question what Judge Wilson intended by this: that a series of acts and omissions made Kemp a trustee by operation of law for the purpose of the Horowhenua Block Act?

The Chief Justice: I do not quite follow you. Do you say that this is capable of explanation? The paragraph says the Court makes no definite finding.

Mr. Bell: That means the special case presented to the Court. What I say is that question 13 explains it. They mean, we shall be relieved of it altogether.

The Chief Justice: They ask this question as a preliminary to decide.

Mr. Bell: No. Question 13 is: "Is the whole or any part of Subdivision 14 of the Horowhenua Block subject to a trust in consequence of the several circumstances detailed above, or any of them?" They ask this question, and say, "If he is a trustee by operation of law, by reason of certain circumstances, then we need not go into that." They ask whether he is or is not a trustee by the operation of law, exclusive altogether of what Judge Wilson intended. Therefore, they ask the Court to consider the several circumstances in answering the question detailed. I am not going into the questions again, but am asking the Court not to give an abstract answer, such as to question 3, for example, but to give answers *secundum subjectam materiam*. The Court will not forget that the Appellate Court is bound to act on its decision. It is required by section 92 of the Act of 1894 to act according to the opinion of this Court. The facts are: First, on the 25th November No. 14 had been allotted in trust, not for the registered owners, but for the descendants of Te Whatanui, who were not among the registered owners. The second fact is that on the 1st December a new allotment was made of equal area (No. 9) for the descendants of Te Whatanui, the descendants of Te Whatanui having refused to accept No. 14. The third fact is that on the 3rd December, "After providing for an allotment for all the persons in the title, there remained the portion of the said block, comprising 1,200 acres" (Block 14). That is in the beginning of paragraph 13. The fourth fact is that the Judge stated that he had hesitated to make the order in favour of Kemp for Block 14, as he considered it advisable, owing to Meiha Keepa having already had in the subdivision a section comprising 800 acres allotted him for the payment of his tribal debts at Wanganui, to adjourn the application, in order that the persons concerned in the apportionment of the Horowhenua Block should have an opportunity of considering whether Meiha Keepa's request in respect of Section 14, comprising 1,200 acres, being allotted to himself should be complied with. That is the fourth fact, and the Court will see the relevance of that fourth fact in a moment. What Judge Wilson states to the Court is reported in the 13th paragraph. The fifth fact is that an order was made on the 3rd December—and, with regard to this fifth fact, nobody can suggest, or has suggested, that it was intended as a trust for the registered owners.

Sir R. Stout: I do not admit that.

Mr. Bell: It is not suggested on the case that there was any intention. He made an order on the 3rd December, and I submit that nobody suggests, or can suggest, that that order was intended to be in favour of the registered owners. The emphasis is, of course, on the intention, whatever the effect may be, and for this reason Block 11 had been put in the names of Kemp and Warena Hunia. My sequence of facts is that a block on the 25th November is awarded to Whatanui's people, but upon trust; but these people got on the 1st December a block which was in the approved locality, and then Block 14 remains to be dealt with, as the Native Land Court and Appellate Court state, and was dealt with in some way; and I add that whatever the effect of what was done may be, nobody can allege that there was an intention to make it in favour of the registered owners.

Mr. Justice Denniston: But for this change, would there be a 1,200-acre block to deal with?

Mr. Bell: It is constructed as the proceedings go on.

Mr. Justice Conolly: What do you suggest was the position of Block 14 immediately before the order of the 3rd December was made? Was it part of the whole original block of which Kemp was trustee for the registered owners?

Mr. Bell: Yes, I suppose that was the position, just as the other blocks dealt with on the 2nd and 3rd December were; and your Honours will remember that is why I make the observation that upon that day they took the registered owners as a body and put them under the cover of Kemp and Hunia. The Native Land Court and the Appellate Court then say that, having made that allotment, the 1,200 acres still remain to be dealt with. Now, it is of the greatest importance, we submit, that the Court should bear these facts in mind when it comes to consider what is the meaning of the expression which the Court uses here, "voluntary arrangement." It is stated, we submit, as a fact by the Appellate Court that Judge Wilson did not say that on the 3rd December he acted on a voluntary arrangement. Your Honours have noted my fact—the fact that the Appellate Court report to you what the Judge said with regard to what he did on the 3rd December. Now, whether rightly or wrongly, he did not say to them that he had acted on a voluntary arrangement. He did not say it to them, because they tell you the contrary.

Sir R. Stout: Pardon me.

Mr. Bell: At page 138 it says,—

"The Judge stated that he had hesitated to make the order, as he considered it advisable, owing to Meiha Keepa having already had in the subdivision a section comprising 800 acres allotted