lection is clear, the affidavit is not to be read to contradict him. If the Court in prohibition were to say that they could not get the answer otherwise than by evidence, how are they going to get the evidence? If a Judge said that at a certain hour he heard a certain thing, then I apprehend it would be conclusive. I submit to the Court that upon the question of principle there is no distinction between a Judge of the Supreme Court and a Judge of an inferior Court, and it seems to have been conceded in the case of the Secondary of London.

The Chief Justice: This is a tribunal set up for the purpose of reviewing the proceedings of the Native Land Court in connection with this Horowhenua Block Act.

Mr. Bell: It is the Native Appellate Court itself. Here the Native Appellate Court, under the Equitable Owners Act, has a report or evidence from one of its own Judges saying that his recollection is clear. Then, is the Native Land Court at liberty to do what this Court is unable to do? I can only leave the position in the way I have put it before your Honours: that this answer to the Appellate Court should be that where there is no record, and the Judge's recollection is clear, it should be conclusive, and that therefore the answer to question 14A should be "No." That is all I have to state on this question of whether the Native Land Court can (Judge Wilson's recollection being clear) accept other evidence to contravene it, and come to the conclusion that he did not intend to give this section to Kemp beneficially; but of course that does not affect the main question. Our point is that it was for the Appellate Court to determine the question of intention, and to determine whether on the 3rd December it was or was not intended as a matter of fact by the Court which made the order of the 3rd December, unless there be an intention of the parties which was not known to the Court, and which was given effect to by the Court in some unintentional way, such as I have suggested in relation to Block 11. The question is what Judge Wilson intended on the 3rd December, and that is the question which was submitted to the Appellate Court to have determined, as the one question remitted by the Equitable Owners Act, and the one question remitted under the Horowhenua Block Act. I propose now to deal with the several questions put to the Court by the Appellate Court. One observation I wish to make first is that the Appellate Court is practically asking in one of their questions whether the concluding words of section 5 of the Horowhenua Block Act, making null and void the certificate of title, did not thereby set up and re-establish the original certificate under the 17th section. Apart from the obvious reply that that is to take away all the effect from the Judge's orders on partition, it is submitted that the subject-matter of the statute is to be looked at, and it is plain that that is so ("Maxwell on Statutes," page 127). It is admitted that section 5, to which I am referring, begins by saying that any order made in pursuance of proceedings under the Equitable Owners Act shall have the effect of vesting such land in the persons so declared respectively to be entitled; and then it proceeds to destroy the Land Transfer titles in order to leave the way open to permit the revesting. It was never the intention of the statute to re-establish the certificate under the 17th section. The Appellate Court started from that, and then assumed there was original jurisdiction to say who would be, under the 17th section, entitled to this block; but the question is whether it was intended by the Court of 1886 to grant this beneficially or not to Kemp. The first question they put is, "Does not section 56 of 'The Native Land Court Act, 1880,' require the assent to a voluntary arrangement under that section of every one of the owners, registered or otherwise, to render it effective, and was it not imperative that the requirements of that section should have been fully complied with prior to giving effect to any such arrangement?" We submit the answer to that is that it is wholly irrelevant. Why should the Court be invited to enter into a discussion of a question of that magnitude? This is a case where notice is given to all the owners, and some of them are dead. It is a block containing 143 owners, and consisting of 52,000 acres. The Natives go outside, and have a meeting at Palmerston North—those of them who can attend. Everybody can go except the dead men, and argument may turn upon that. They make an arrangement among themselves, and the Court proceeds to give effect to that arrangement. Now, section 56 of the Act of 1880 says, "It shall be lawful for the Court, in carrying into effect this Act, to record in its proceedings any arrangements voluntarily come to amongst the Natives themselves, and to give effect to such arrangements in the determination of any case between the same parties." Judge Wilson, rightly or wrongly, arrived at his decision, not only with regard to Block 14, but every block forming part of the 52,000 acres, upon the common consent of the Natives. What we submit is that they ask a question which is not relevant to the inquiry before them, because if we are right in contending that the jurisdiction is limited to the inquiry whether what the Court did, regularly or irregularly, was with the intention of creating a trust, then the question whether the Court proceeded regularly or irregularly, or even without any jurisdiction whatever, is apparently of no importance. Therefore we submit that, first, the answer should be covered by the answer to question 15; and, second, that it should be that the question is irrelevant, and not within the jurisdiction of the Court.

The Chief Justice: We think it would be more convenient to call upon Sir Robert Stout to answer your contention with regard to the general question, as we understand that you say, taking the Equitable Owners Act and the Horowhenua Block Act together, that the real question to decide is whether, with regard to Block 14, the Native Land Court had intended to give a beneficial ownership to Kemp or otherwise.

Mr. Bell: There is one special and somewhat curious question, but I think it is within the point I have been making. If your Honours will look at the pink plan, which was the plan before the Native Land Court, you will see that Block 14 is bounded by the railway-line. No. 11 lies to the westward of the railway-line, and Block 14 lies on the southern corner of the land bounded towards the westward of the railway-line. It is found on the survey that they could not provide the 1,200 acres in that, and several sections are pushed out. No. 11 appears to be a block of 15,211 acres. That is the piece of land out of which Block 14 is cut. Now, turning to the plan signed by Kemp and Hunia—if your Honours will just look at the railway-line on that plan—No. 14 runs across the railway-line and into what was originally No. 11,