

respect of any Native block, more especially blocks situated on the west coast of this Island. This fact ought to be kept steadily in view. It is not a question of a layman or an ordinary lawyer, but of a much experienced, an industrious, and a very widely informed Native agent and lawyer.

Horowhenua
Commission
evidence, p. 242.

Further than this, Sir Walter Buller had from the year 1874 to 1886 acted on and off, or practically always, for Major Kemp both in and out of the Native Land Court. He knew more of Major Kemp's business than any other man, and he knew, amongst other things, that Major Kemp was the sole certificated owner of the Horowhenua Block, and, as such, that he was trustee for 143 Natives whose names were registered in the Native Land Court records.

Horowhenua
Commission
evidence, p. 253.

It must be borne in mind with regard to this block that the Horowhenua Block is not an ordinary block. It has from the very earliest period stood out as a block with a peculiar history, and has always attracted attention. Both its area and position too marked it out. It was a block which had been awarded in the centre of a very large tract of country. The remnant of the Muaupoko had had this awarded to them in 1873 in opposition to the strong protests of the Ngatiraunkawa. Sir Walter Buller knew, as did every one else, that at the time of the Court in 1873 Major Kemp, with a strong body of armed Natives, was encamped on or close to this Horowhenua Block, and was demanding it from Sir Donald McLean on the threat of bloodshed, and was thereupon awarded it; and he knew further of the fighting, and bickering, the burnings, the threatened bloodshed in connection with the award of this land to the Muaupoko.

I only mention these facts as leading up to this point: that Sir Walter Buller's attention, equally with the attention of other men who took any interest in Native affairs at that time, must have been directed since 1873 to the peculiar position of this block, and Sir Walter Buller himself, in the course of his professional intercourse with Major Kemp, must have frequently discussed the position of that block with him.

MAJOR KEMP'S POSITION UP TO 1886.

Otaki minute-
book, Vol. i.

Now, it is worth while to remember the position Major Kemp took up in 1873 with regard to the Horowhenua Block. He said, in effect, he was asserting a right to the land for the Muaupoko and other tribes, but only as their agent in the matter. And such was the fact. Major Kemp resided at Wanganui, and Wanganui, not Horowhenua, was his ancestral place. It is true he claimed kindred with the Muaupoko Tribe, who had been awarded this Horowhenua Block, but Major Kemp, until a very late period, never asserted a substantial personal claim to Horowhenua. And the land was awarded to him in 1873, and he took it in his own name, in trust for himself and the other owners. That cannot be disputed. To use Sir Walter Buller's own words, Major Kemp was "in fact and in law trustee" for the 143 registered owners.

SIR WALTER BULLER'S FIRST AGREEMENT.

Horowhenua
Commission
evidence, p. 242.

Native Appellate
Court printed
evidence, p. 83.

Now, Sir Walter Buller states that before his departure for England in the year 1886, knowing the position of the title and Kemp's trusteeship, he obtained from Major Kemp a promise to lease him a lake called Papaitonga, situated on the south portion of the block, and now forming portion of Subdivision 14, and a small piece of land close to the lake. It is a remarkable fact that neither Sir Walter Buller nor Major Kemp has any recollection where and when this arrangement was made and what the terms were. They are both agreed in stating that all they remember was that Sir Walter Buller requested Kemp to lease him a portion of the land including the lake, and that Major Kemp consented. And both of them now state that that arrangement was present to both of their minds from the year 1886 up till 1892. Sir Walter Buller was unable to say whether this arrangement was made shortly before his leaving for England or not, and when he was asked why the arrangement was not carried out in 1886, before he left New Zealand, or in 1890, when he returned, he was unable to state. The fact is significant, because there was even in 1886 nothing to prevent a lease from being granted, and I suggest that the story is a mere afterthought to account for the fact that, while certain of the other Natives dealt with the portions of the land awarded to them beneficially in 1886, Major Kemp did not for six years attempt to deal with this Subdivision No. 14, which it is now alleged was awarded beneficially to him in 1886, and for the very good reason that he was perfectly well aware that it was trust property until it was suggested to him that he could claim it beneficially by, I venture to suggest, Sir Walter Buller.

Native Appellate
Court evidence,
p. 83.

Now, the whole point I am concerned with is this: Was there or was there not any evidence that Sir Walter Buller was aware of the trust in respect of Subdivision No. 14? Sir Walter Buller admits that prior to his leaving for England in 1886 he knew that Major Kemp was trustee for the 143 registered owners, including himself, in respect of the whole block. Surely, then, it lies upon Sir Walter Buller to prove that he knew of the extinguishment of this trust as regards Subdivision No. 14. Has he done it?

KEMP'S POSITION AFTER THE PARTITION IN 1886.

Native Appellate
Court evidence,
p. 85.

Shortly after Sir Walter Buller's departure for England Major Kemp was induced to apply to the Native Land Court for the purpose of partitioning the Horowhenua Block, and the partition duly took place in November and December of that year. Upon the partition Major Kemp was awarded several sections in his own name, and one section was awarded to Major Kemp and Warena Hunia, and one to Ihaia Taueki. These sections were all awarded by the Native Land Court to the various grantees in their own names without mention of any trust. But, with regard to these sections, it is undisputed that all (except No. 14) were awarded on trust. Leaving that apart, let us consider the others. One was the Allotment No. 1, which was to be sold to the Manawatu Railway Company, and was understood at the time to be in trust for all the owners; No. 2 was 4,000 acres, given to Major Kemp, to be sold to the Government for a township. This also was to be sold upon trust for the whole of the Native owners, and the proceeds applied in their favour. No. 6 was awarded to Major Kemp, and it was understood to be upon trust for