with the full acquiescence of the tribe allotted to Kemp for his own. [Quotes from minutes to show that the purpose for which each parcel was intended was expressed in Court.] The onus is on counter-claimants to prove a trust. The surrender of the title on partition did away with the trust that existed previously. It is for the counter-claimants to show that a new trust was created in respect of No. 14. The order of the Court of 1873 established the fact that Kemp was entitled to something. In 1886 all the owners were awarded something. In 1874 Kemp agreed on behalf of the tribe to give a certain area to the descendants of Whatanui. This piece was to be at Raumatangi, close to the lake, where Whatanui's people had been squatting. No. 9 adjoins Raumatangi, whereas No. 14 is at the extreme southern end of the block, abutting on Lake Waiwiri. No. 9 came before the Court in the morning of the 1st December as No. 3, but there was some difficulty as to the boundaries, and the final order was not made until the afternoon, when the boundaries had been adjusted. It was then called No. 9, and was put in Kemp's name for conveyance to the descendants of Whatanui. No. 14 was not awarded to Kemp until the 3rd December following. If the counter-claimants could prove that No. 14 was awarded to Kemp for the descendants of Whatanui they would no doubt establish a resulting trust to Muaupoko, but they cannot do this. I will put in a list initialled by Judge Wilson showing sequence in which orders were made, and which shows that No. 9 was awarded two days before No. 14. The evidence before the Royal Commission shows that Nicholson refused No. 14, and Judge Wilson has sworn that No. 14 never came before him as the section for the descendants of Whatanui. Neville Nicholson's evidence before Horowhenua Commission, page 114, answers 114 to 118, shows that the land that is now known as No. 14 was refused by the descendants of Whatanui before the Court opened in 1886. [Quotes McDonald's evidence before Horowhenua Commission *re* Nos. 9 and 14.] The theory of a resulting trust to the Muaupoko Tribe rests on two assumptions—(1) That when No. 14 was awarded to Kemp in December, 1886, it was awarded to him in trust for the descendants of Te Whatanui, if they chose to accept it; and (2) that the descendants of Te Whatanui did not refuse No. 14 until after it had been awarded to Kemp. But the facts are that No. 14 was not given at all to Kemp in trust for the descendants of Whatanui, for, as Nicholson and Judge Wilson prove, they had refused that subdivision a week at least before it was awarded to Kemp. A man cannot give his land to a second man in trust for a third man to create an effectual trust unless all three persons consent. Applying this maxim to the present case, I would say that when Muaupoko allowed Kemp to become legal owner of No. 14 Kemp was not thereby constituted a trustee for the descendants of Te Whatanui unless Kemp consented to be a trustee and the Muaupoko consented to give No. 14 to Whatanui's descendants and they accepted the gift. I will now conclude my address with one general remark. This case does not depend on Native evidence. There is no getting away from what has been said and done in Court, and these facts do not depend on Native evidence. I shall call one or two leading chiefs to say, on behalf of the tribe, that they all understood that No. 14 was for Kemp's share, and acquiesced in his getting it; but even this evidence is irrelevant. They have consented once for all to Kemp having it. Kemp was given a freehold title to No. 14 by the partition of 1886, and the question is whether that title is or is not trammelled with a trust. Even at the partition of 1886 no claimant for any of the subdivisions gave evidence proving his title, according to Maori custom, to the share he claimed. Such evidence would have been irrelevant, as the partition was by voluntary arrangement, and it would, I submit, be doubly irrelevant now.

I put in minutes of evidence taken before the Horowhenua Royal Commission, also copy of Judge's minutes and the judgment of the Supreme Court in the case—Major Kemp *v.* Warena Hunia.

The Court adjourned till 10 a.m. of the 26th instant.

FRIDAY, 26th FEBRUARY, 1897.

The Court opened at 10 a.m.

Present: The same.

No. 1, Horowhenua No. 14, resumed.

Mr. Ransfield asked whether this Court could deal with his application respecting the reserves in No. 11.

The Court informed him that it had the power to make inquiries regarding the reserves; but it did not propose to go into the question at this stage, and advised him to authorise some one in attendance at the Court to let him know when the case came on.

Sir W. Buller: It was agreed yesterday that Horowhenua Commission evidence should be put in as a whole. I hand in a copy of it, and will call Judge Wilson. Ask that questions and answers be interpreted.

JOHN ALEXANDER WILSON sworn.

I am a Judge of the Native Land Court, and I reside in Auckland. I presided at Native Land Court held for division purposes in 1886. The Horowhenua Block was then before the Court for partition. I subsequently gave evidence in reference thereto before the Supreme Court in Wanganui and the Horowhenua Commission. The original title was under the 17th section of the Act of 1867. Major Kemp was the sole certificated owner; the names of 143 persons were indorsed on back of certificate. I cannot remember whether Kemp was one of the *cestuis que trustent*, but he was in the certificate. The partition was taken by voluntary arrangement, but all that was said in Court was on oath. No ancestral title was proved; the partition was agreed to by the owners. I should say that the tribe was in Palmerston, judging by the numbers present. The whole scheme of partition was discussed by them, but it was only disclosed to the Court bit by bit. Major Kemp had an authorised surveyor to mark off on plan the divisions as they were made. I believe his