

opening of the abortive sitting, as the minutes of the 25th November show, Kemp asked that Mr. Alexander McDonald, who, though not retained by the tribe, was assisting them, should be allowed to make a speech explaining the position. Accordingly, Mr. McDonald was sworn, and, after stating the general aims of the tribe in making the partition, he went on to tell the Court that the tribe, who, as I have already explained, had begun their deliberations in the barn, were prepared to go on with three of the subdivisions, and that the second of these would be (to quote the words of the minute) "1,200 acres in terms of an agreement made between himself" (which, of course, refers to Kemp) "and the late Sir Donald McLean as Minister." I may mention that the agreement was afterwards produced in Court, and Mr. Lewis explained that it was an agreement to give a subdivision near Lake Horowhenua for the descendants of Te Whatanui. I refer to all this only to show that the phrase "for the purpose of fulfilling an agreement with the Government" in the minute of the 1st December unmistakably denotes that a trust is intended for the descendants of Te Whatanui.

Judge Wilson, then, has declared positively that when he allotted No. 14 to Kemp it was stated in Court that this subdivision was intended for Kemp himself, and that the tribe perfectly understood and acquiesced in this. And I have confirmed his evidence by calling attention to the admitted fact that when each subdivision came on something was said in Court as to the intention of the tribe in asking for the award. But I can go further than this in regard to No. 14, and show by the record that Judge Wilson, who had been warned at the outset that Kemp was going to apply for a subdivision for himself, was on the look-out for that subdivision, and when it came on was specially careful to see that there was no mistake about its being for Kemp himself. I have just previously in my address told the Court about the speech that Mr. McDonald made at the opening of the sitting of the abortive Court explaining the general aims of the tribe. He first of all explains the statutes applicable to the case: then follows some very important matter. Mr. McDonald is telling the Court that the partition is to be made by general agreement of the tribe, and Kemp will conduct the partition, and that when Kemp makes the various applications it must be understood that he does so as the mouthpiece of the tribe. Mr. McDonald, as quoted by the minute-book, says (I am quoting from page 183), "Kemp wishes to satisfy the Court that he appears as agent for the owners and the medium of their desires to the Court." In other words, Kemp asks that the consent of the tribe to each application that he may make shall be presumed by the Court. Then follows what I desire to draw special attention to. The Court says, "We cannot look upon Kemp as their agent. He may be their spokesman. The other owners are not precluded from getting up and objecting to Kemp's case. They must know exactly what Kemp's subdivision is." This is a very circumstantial minute, showing that Mr. McDonald had told the Court that Kemp was to have a subdivision for himself. Judge Wilson, expressly on the ground that Kemp is to have a subdivision for himself, and that he is therefore an interested party, says that the word "agent" as applied to Kemp is a misnomer, and that "spokesman" would be a more appropriate word. He says, in effect, that the tribesmen are not to be deterred from objecting to any application by Kemp to which they do not really consent; and, finally—and this is what I rely on—he says that "they must know exactly what Kemp's subdivision is," in order that when Kemp applies for it for himself they may make quite sure that it is really intended for him. It entirely accords with this evidence that Judge Wilson should afterwards state before the Royal Commission—I am quoting his own words, page 134, answer 104—"I am sure we challenged thoroughly for No. 14. I suppose we challenged in all of them very carefully, but we should be particularly careful with a chief when he says, 'I am to have that.'" Thus Judge Wilson took very proper precautions in respect of No. 14. In justice to Kemp, however, I may incidentally mention that afterwards, before the Royal Commission, speaking of Kemp's conduct in carrying through the partition, Judge Wilson said—page 132, answer 54—when asked "What was your impression of Kemp's attitude towards the tribe through all these proceedings," "I thought he was a very exemplary chief—thoroughly loyal to his tribe. It was in this respect that I spoke of him as an exemplary chief."

I have now concluded the first part of my address, and have laid before the Court the affirmative evidence showing that Kemp received No. 14 as absolute owner; and the Court will observe that throughout I have been careful not to say that I will prove each point, but to prove it. I shall, with the leave of the Court, summarise this affirmative evidence. But let me first make two emphatic comments—the Court will bear me witness if they are true or not. In the first place, the onus is on the counter-claimants to prove that there is a trust, and, as a rule, the person in whom is vested the legal ownership does not attempt to prove affirmatively that this legal ownership is untrammelled and absolute, but simply produces his Land Transfer certificate and says, "Look! I am legal owner; now prove a trust if you can." Yet Kemp, although the onus is not on him to do so, produces evidence showing that he was intended by the tribe to enjoy the land beneficially. And, in the second place, what is the quality of the evidence that Kemp adduces? Kemp's case does not depend in one single particular upon the interested testimony of himself or any other Native witnesses, but exclusively upon the authoritative records of the Court, corroborated by the weighty evidence of Judge Wilson.

Now let me summarise the uncontradicted facts which I have laid before the Court: (1.) The judgment of the Native Land Court in 1873 has judicially established the fact that Kemp is entitled according to Native custom to a share in Horowhenua as one of the 143 registered owners. (2.) In the second place, at the partition of 1886 every registered owner except Kemp received his 105 acres, or what not—his separate piece of land—Kemp alone, the chief, unless we suppose that No. 14 was for him, received no such individual allotment—and this in spite of the fact that at the very outset of the case Mr. McDonald informed the Court that Kemp was to have a subdivision for his own—this last fact being proved by the minute-book. (3.) Judge Wilson has stated positively that he was particularly careful to challenge when No. 14