

came on. He has declared emphatically, before the Supreme Court and the Royal Commission, that it was perfectly understood and acquiesced in by the tribe that No. 14 was for Kemp himself (to use his own words) "to do what he liked with," and that this was stated in Court. It will be a matter for strong comment with me if any evidence is now produced by the counter-claimants to contradict Judge Wilson's recollection of what was stated in Court, seeing that no attempt of the kind was made either in the Supreme Court or before the Royal Commission. And, moreover, the minute-book bears Judge Wilson's recollection out. In addition to this (4) Kemp has held Subdivision 14 for ten years uncaveated and undisputed; in contrast to the supposed trust subdivisions of the block which were caveated by members of the tribe as early as 1892, and in respect of one of which (No. 11) two actions were brought to enforce the trust. During these ten years Kemp in express words claimed that he was absolute owner of No. 14, leasing and selling parts of it, and no member of the tribe either disputed his right or claimed any share of the moneys. I now turn to the theory of a trust, which was suggested on behalf of the counter-claimants before the Royal Commission. I cannot at the outset too emphatically tell the Court that this theory of the counter-claimants is only tenable on the assumption that the records of the Court of 1886 are vitiated by very serious errors. Of course any theory that No. 14 is trust property comes directly into conflict with the already-quoted entries in the minute-book of remarks made in Court; but the particular theory of the counter-claimants can only hold water if there are much more serious errors in the minute-book and Court map. The Court can only credit this theory if it is prepared to say that two minutes of orders should be struck out from the minute-book, as no such orders were made, and that the numbering of the subdivisions in the minute-book and Court map—which is a very important matter, as it is not arbitrary, but depends upon the sequence in which the subdivisions came before the Court—is wrong in respect of six subdivisions. I wish that I could turn at once to this theory of the counter-claimants and show how it conflicts with the record; but, first of all, I am compelled to some extent to go back to an old story beginning in the year 1873, and ask the Court to listen to some facts which the counter-claimants will insist upon as leading up to their theory of a trust.

The Native Land Court, as I have said, in 1873 awarded the Horowhenua Block to the Muaupoko Tribe. In the year 1874, at the request of Sir Donald McLean—then Native Minister—Kemp took upon himself, as chief of the Muaupoko, to promise on their behalf that at some convenient future time the tribe would give the descendants of the great Te Whatanui a subdivision of 1,300 acres out of Horowhenua. I may mention, in explanation, that Kemp was really ratifying an old promise made a generation ago by Taueki, in gratitude for Te Whatanui's services to the tribe. I will read the written note of Kemp's promise. [Reads memorandum in full, from page 9 of the report.]

The Court will notice, as it is a very important point, that the subdivision is to be located near the Horowhenua Lake. The reason why the descendants of Te Whatanui should desire this is obvious when I mention the following facts: The descendants of Te Whatanui had in 1873 been squatting for some time, with the acquiescence or sufferance of the Muaupoko, on Horowhenua, near the lake; and the Court of 1873, while giving the rest of Horowhenua Block to the Muaupoko, recognised the squatting title of the descendants of Te Whatanui by cutting out and awarding to them a section called Raumatangī, containing 100 acres, this being the actual site of their kaingas and cultivations. If the Court will look at Raumatangī on the map they will see that Raumatangī adjoins Lake Horowhenua and the Hokio Stream; and no doubt the spirit of Kemp's promise to Sir Donald McLean was that the new subdivision to be granted to the descendants of Te Whatanui should be somewhere adjoining the lake and Raumatangī. While looking at the map, I would ask the Court to note carefully a point, the importance of which will appear presently—namely, that what is now Subdivision 9 adjoins Raumatangī, the Hokio Stream, and Lake Horowhenua, whereas No. 14 is right away from all three, abutting on Lake Waiwiri. Kemp, then, in 1874 promised Sir Donald McLean that the Muaupoko would cut off one subdivision of 1,300 acres near to Lake Horowhenua for the descendants of Te Whatanui. I may say at once that at the partition of 1886 the Muaupoko ratified Kemp's promise—a purely voluntary promise, I should mention—and were willing to cut off a subdivision of 1,200 acres—not 1,300 acres—for the descendants of Te Whatanui. I should explain that—although it is a point that nothing turns upon in the present case—the Muaupoko insisted on deducting the 100 acres comprised in Raumatangī from the 1,300 acres promised by Kemp. All this is common ground between Kemp and the counter-claimants. Now, will the Court please follow me while I read a minute of the 1st December, the minute of the order awarding Subdivision 9—the subdivision adjoining the Horowhenua Lake and Raumatangī—to Kemp, in trust for the descendants of Te Whatanui. I am reading from the minutes of the 1st December, page 192. The Court will observe that the boundaries of No. 9 are defined very carefully. I will ask the Court to follow me on the map as well. [Reads from "Application" to "Raumatangi lengthwise."] I have already explained that the subdivision for the descendants of Te Whatanui was to be near to Raumatangī. [Reads from "The land" to "tracing."] This minute is a minute of an order made in the afternoon, for the minute continues, "The Court awarded this, this morning, as No. 3 subdivision, to Keepa te Rangihiwini. This subdivision, 1,200 acres, is made as prayed. This and all other previous subdivisions to be delineated upon the map of the Court."

The afternoon minute, then, states that No. 9 had been before the Court in the morning as No. 3. I will read the morning minute presently. When I do so, the Court will see that Judge Wilson awarded Subdivision 9 in the morning as No. 3, but there was a difficulty as to the boundaries. The subdivision came on again, therefore, in the afternoon, by which time the boundaries were fixed, and, as the afternoon minute (which I have just read) shows, the morning order is confirmed in the afternoon and the subdivision is ordered to be delineated on the Court map. Probably there was a good deal of discussion between Kemp and the Muaupoko on the one hand and the descendants of